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Supreme Court of the United States

OCTOBER TERM, 1962

No. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, ET AL., PETITIONERS,

vs.

ANNA MAE ALLEN, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

PETITION FOR CERTIORARI FILED AUGUST 10, 1962
CERTIORARI GRANTED OCTOBER 22, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

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IN THE
SUPERIOR COURT OF MECKLENBURG COUNTY
STATE OF NORTH CAROLINA

[fol. 1]

ANNA MAE ALLEN, MILLICENT C. BAILEY, DOROTHY IRENE BALL, C. ELIZABETH BROWN, MARJORIE L. BROWN, WILLIE MAE BROWN, D. L. BRYANT, MARY CALLAHAM, SHIRLEY CARRIKER, EDWARD D. CASEY, E. L. CLOANINGER, JR., W. H. DAVIS, ROY T. ELLIS, JR., E. JUNE JOY, H. L. JUSTICE, R. F. KISTLER, PEGGY MCCRANIE, E. E. QUEEN, REBECCA SCHOLL, KATHERINE K. SNAVELY, DOLORES SHEETS, LEE L. STICKLEY, ROBERT R. TATUM, MIRIAM P. THOMPSON, AILEEN E. WARNER and KATHRYN C. WEISNER, for themselves and in behalf of all other employees of the Southern Railway Company having a common interest in the subject matter of this action, Plaintiffs, and BICKETT BASS, MARY B. CROSBY, GEORGE D. ATWELL, HAROLD B. HACKNEY, CELESTIA S. SMITH, CRAVEN SMITH, R. P. POWELL, H. L. NUSSMAN, J. B. NUSSMAN, SR., JOHN W. JORDAN, and L. J. BYRUM, Additional Plaintiffs,

v.

SOUTHERN RAILWAY COMPANY, INTERNATIONAL ASSOCIATION OF MACHINISTS, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA,

[fol. 2]

INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, THE ORDER OF RAILROAD TELEGRAPHERS, BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AMERICAN TRAIN DISPATCHERS ASSOCIATION, RAILROAD YARDMASTERS OF AMERICA and RAILWAY EMPLOYEES' DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, Defendants.

[fol. 6]

COMPLAINT

The plaintiffs, complaining of the defendants, say and allege:

(1) That the plaintiffs are citizens and residents of [fol. 7] Mecklenburg County, North Carolina, and are in the employment of the defendant Southern Railway Company.

(2) That the defendant Southern Railway Company, as the plaintiffs are informed and believe, is a corporation which operates a railroad business in the State of North Carolina and elsewhere; that all the other defendants named above are, as the plaintiffs are informed and believe, unincorporated labor organizations or labor unions, which represent and admit to membership railway employees in the various crafts, occupations and types of work which are indicated in the respective names of such organizations.

(3) That there are many persons in the employment of the defendant Southern Railway Company who are situated similarly to the plaintiffs and who have a common interest with the plaintiffs in the subject matter and the outcome of this action, but who are so numerous that it is impracticable for them each to be brought before the Court as a party to this cause, and therefore the plaintiffs bring this action not only for themselves but also for and in behalf of such class, that is, all employees of the defendant Southern Railway Company who have a common interest with the plaintiffs in the subject matter and outcome hereof.

(4) That the plaintiffs earn their livelihood by means of their employment with the defendant Southern Railway Company; that the plaintiffs, some of them for many years, have fulfilled the duties of their respective positions with the Southern Railway Company competently and faithfully; that the plaintiffs need to continue, and earnestly desire to continue, their employment with the Southern Railway Company but that they are now threatened with

loss and termination of the same solely by reason of the following circumstances.

(5) That the plaintiffs and many other employees of the [fol. 8] defendant Southern Railway Company are not members of and do not pay dues, fees or assessments to any of the defendant labor organizations; but that the defendants have informed the plaintiffs that the defendant Southern Railway Company, on the one hand, defendant labor organizations, on the other, have entered into a contract by which they have agreed between them that all employees of the Southern Railway Company, in crafts, occupations and work similar to the plaintiffs, will be discharged from their jobs unless they join and pay initiation fees, dues and assessments to one of the defendant labor organizations representing respectively such crafts, occupations and types of work.

(6) That the plaintiffs are opposed to and are not willing to enter into such compulsory affiliation with the defendant labor organizations; but that the defendants have notified the plaintiffs and other employees of the Southern Railway Company, as aforesaid, that they must all of them and each of them join one of the defendant labor organizations and commence paying fees, dues and assessments to such labor organizations, by June 15, 1953, or else they will each and all be discharged from their jobs.

(7) That the aforesaid contract and the threatened enforcement of the same against the plaintiffs is unconscionable and wrongful, contrary to the Constitution, the common law and the Statutes of the State of North Carolina and violative of the rights of the plaintiffs thereunder, an offense against fundamental principles of liberty and an intolerable oppression of free citizens.

(8) That by reason of the matter hereinabove set forth, and the aforesaid wrongdoing by the defendants being immediately threatened and impending and the plaintiffs and other similarly situated employees of the Southern Railway Company having otherwise no adequate remedy or [fol. 9] recourse, they are entitled to have the defendants

restrained and enjoined from enforcing and carrying out the terms of the aforesaid contract.

Wherefore, the plaintiffs, for themselves and in behalf of all other employees of the Southern Railway Company similarly situated and having a common interest in the subject matter of this action, pray the Court:—

To restrain and enjoin the defendants and each of them from enforcing or carrying out or seeking in any manner or by any means, directly or indirectly, to bring about the enforcing or the carrying out of such terms of the aforesaid contract as provide that the plaintiffs and other employees of the Southern Railway Company must, as a condition of employment, join and pay initiation fees, dues or assessments to the defendant labor organizations.

To restrain and enjoin the defendants and each of them, and all other persons who receive notice or knowledge of the Court's order, from taking any action or doing anything whatever for the purpose of requiring the plaintiffs and other employees of the Southern Railway Company to join and pay initiation fees, dues or assessments to any labor organization as a compulsory condition of employment.

To grant such other and further relief herein as to the Court may seem just and proper.

Pierce and Blakeney, Attorneys for Plaintiffs.

(Duly verified.)

IN SUPERIOR COURT OF MECKLENBURG COUNTY

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE —June 8, 1953

This Cause coming on to be heard upon the duly verified [fol. 10] complaint of the plaintiffs, treated as an affidavit; and the Court having examined the same; and it appearing that this action has been duly and properly instituted in this Court and that summons has been duly and properly issued against each of the defendants;

And the Court being of the opinion that a temporary restraining order and injunction, as hereinafter set forth, should now issue from this Court;

Now, Therefore, It Is Hereby Adjudged, Ordered and Decreed that, until the merits of this cause are determined and pending the further orders of this Court:—

The defendants, and each of them, are hereby restrained and enjoined from enforcing or carrying out or seeking in any manner or by any means, directly or indirectly, to bring about the enforcing or the carrying out of such terms of the aforesaid contract as provide that the plaintiffs and other employees of the Southern Railway Company must, as a condition of employment, join and pay initiation fees, dues or assessments to the defendant labor organizations.

The defendants, and each of them, and all other persons who receive notice or knowledge of this order, are hereby restrained and enjoined from taking any action or doing anything whatever for the purpose of requiring the plaintiffs and other employees of the Southern Railway Company to join and pay initiation fees, dues or assessments to any labor organization as a compulsory condition of employment.

This order shall become effective upon the plaintiffs' filing in the Office of the Clerk of the Superior Court of Mecklenburg County a bond, approved by the said Clerk, in the amount of $200.00, by which the plaintiffs undertake

and agree that, in the event it is finally determined that [fol. 11] this order should not have been issued, they shall pay to the defendants such damages, up to the aforesaid amount, as the defendants may have suffered by reason of the issuance of this order.

It Is Further Ordered that the defendants and each of them appear, in person or by counsel, before J. Will Pless, Jr., Judge of this Court, at the County Courthouse in Charlotte, North Carolina, on the 17 day of June, 1953, at 2 o'clock P.M., and then and there show cause, if any they have, as to why this order should not be continued in effect until the merits of this cause are finally tried and determined.

This the 8 day of June, 1953.

J. Will Pless, Jr., Judge Presiding.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

ORDER CONTINUING RESTRAINING ORDER—June 17, 1953

This Cause coming on to be heard before the undersigned Judge presiding at the June 15, 1953, Regular Term of Superior Court of Mecklenburg County, pursuant to the order to show cause, dated June 8, 1953, previously entered herein, and all parties being represented by counsel, and the defendant Southern Railway Company having filed an answer as appears of record; and the other defendants, through counsel, asserting that they were appearing specially for the purpose of opposing the continuation of the temporary restraining order contained in the above mentioned order dated June 8, 1953, as more fully appears from the written "Special Appearance" filed by them, and the Court having considered the verified pleadings and affidavits filed by the various parties as appear of record; and counsel for all parties having argued the merits of the case and other phases of the matter;

And the Court finding as a fact that the defendant [fol. 12] Southern Railway Company and the defendant

labor organizations have entered into a contract requiring the plaintiffs and other employees of the defendant Southern Railway Company to become and remain members of the defendant labor organizations and to pay initiation fees, dues and assessments to such defendant labor organizations in order to continue in their employment with the defendant Southern Railway Company; and that the plaintiffs and other employees of the defendant Southern Railway Company desire to continue their employment with the defendant Southern Railway Company but are not willing to join or pay initiation fees, dues and assessments to the defendant labor organizations; and that the defendants have made it known to the plaintiffs and other employees of the defendant Southern Railway Company that they will enforce the said provisions of the said contract against the plaintiffs and other employees of the defendant Southern Railway Company unless they, the defendants, are by Court action prevented from doing so;

And upon all of the foregoing and upon consideration of the case in all aspects, the Court being of the opinion that the aforementioned provisions of the aforesaid contract and the making thereof are, and the enforcement thereof against the plaintiffs and other employees of the defendant Southern Railway Company would be, wrongful and unlawful, and that the temporary restraining order and injunction heretofore entered in this cause should be continued in effect pending a final determination of the merits of this cause;

Now, Therefore, It Is Hereby Adjudged, Ordered and Decreed that the temporary restraining order and injunction heretofore entered in this cause be, and it hereby is continued in full force and effect until the merits of this cause are finally tried and determined.

This the 17th day of June, 1953.

J. Will Pless, Jr., Judge Presiding.

[fol. 13]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

ANSWER OF DEFENDANT SOUTHERN RAILWAY COMPANY

Now comes defendant Southern Railway Company and, by way of answer to plaintiffs' bill of complaint, says:

I. Defendant admits the allegations of paragraphs (1), (2), (3) and (4) of the complaint.

II. In answer to paragraph (5) of the complaint, defendant admits that many of its employees are not members of and do not pay dues, fees or assessments to any of the defendant labor organizations, and that defendants have informed plaintiffs that defendants have made a contract pertaining to the requirement of employees belonging to defendant labor organizations and the payment of dues, fees or assessments, and that all employees covered thereby will be required to comply with the provisions of said contract or be subject to discharge as provided therein. A copy of said contract, marked Exhibit "A" is attached hereto and made a part hereof as if fully and completely set forth herein.

III. In answer to paragraph (6) of the complaint, defendant admits the allegations thereof except that defendant only notified plaintiffs and other employees that they must comply with the provisions of said contract attached hereto as Exhibit "A" (sometimes hereinafter referred to as "Union Shop Agreement") or be subject to discharge as therein provided.

IV. Defendant is advised that paragraphs (7) and (8) consist of allegations or conclusions of law which it is not required to answer.

V. Further answering the complaint herein, defendant says:

1. The Railway Labor Act, 45 U.S.C., Sec. 152, Paragraph Fifth, prior to the amendment thereto hereinafter mentioned, specifically forbade agreements by carriers [fol. 14] which would require employees as a condition of

employment to join or not to join a labor organization. In the 81st Congress, a bill was introduced to amend the Railway Labor Act to permit such agreements pertaining to union membership. Representatives of defendant and other carriers appeared before committees of Congress and vigorously opposed the passage of such a bill, which was then being advocated by representatives of the defendant unions herein. On January 10, 1951, nevertheless, Congress passed a bill which amended the Railway Labor Act so as to permit carriers and labor organizations duly designated and authorized to represent employees, to make agreements requiring, as a condition of continued employment, that all employees shall become members of a labor organization representing their class or craft and to make agreements providing for the deduction by such carriers from the wages of employees in a craft or class and payment to the labor organizations representing the class or craft of such employees, of any periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. A copy of such amendment, now Paragraph Eleventh in Section 2 of the Railway Labor Act (45 U.S.C., Sec. 152, Par. Eleventh) is annexed hereto, marked Exhibit "B". This amendment by its terms makes it permissive for carriers and labor organizations to execute agreements providing for the union shop, collection by the carrier under the conditions therein set forth of union dues, fees and assessments from its employees, and requiring, as penalty for failure of such employee to become a member of the union and to pay or tender such dues, fees and assessments to the union, dismissal by the employer of such employee, "notwithstanding any other provision of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State."

2. Upon the amendment of the Railway Labor Act per- [fol. 15] mitting union shop and check-off agreements as aforesaid, notice and demand so to amend their respective labor agreements to include provisions requiring the same was served upon defendant by the defendant unions herein. Concurrent demand similarly made by such unions upon a

large number of railroads resulted in a refusal on the part of defendant and the other carriers to consent so to amend their agreements. Thereupon, further negotiations and proceedings in mediation before the National Mediation Board having failed to dispose of the controversy, the President of the United States appointed an Emergency Board to hear and report upon the controversy. This defendant appeared before said Board and earnestly opposed any finding that it should enter into any such union shop and check-off agreement. The recommendations of this Emergency Board dated February 14, 1952, substantially supported the employee demands with respect to said union shop and check-off agreements. Thereafter many of the railroads involved, under the duress of economic force, as the defendant has reason to believe, executed such an agreement.

3. On February 25, 1953, and on dates subsequent thereto, demand was again made upon defendant and the other carriers parties to the agreement of February 27, 1953, attached hereto as Exhibit "A", by the defendant unions that a union shop and check-off agreement in exact form as annexed hereto as Exhibit "A" and without change of any word, clause or portion thereof be immediately executed by defendant and put into effect, and implying that unless same was done, strike of employees and complete cessation of operations of the defendant would result and be made effective. Defendant, having been advised that a majority of the Eastern and Western railway carriers and a number of the carriers operating in the Southeast, including carriers which compete with defendant, had entered into the proposed union shop and check-off agreement with the defen- [fol. 16] dant unions, decided as a practical matter it was necessary to execute the agreement in order to avoid what then appeared to be a probable long and costly strike, which would be extremely damaging to defendant and to the interests of the public. Notwithstanding the fact that defendant then believed, and still does believe that the principles embodied in said union shop agreement are unsound and improper and are subject to question as to their validity and legality, defendant finally yielded and executed the said union shop agreement on February 27, 1953.

4. Having executed the agreement, defendant felt obliged to honor its terms and provisions and undertook to perform the agreement as required. However, having been served with a copy of a Temporary Restraining Order issued by the Superior Court for Guilford County, North Carolina, dated May 18, 1953, and a similar order issued by the Superior Court for Bibb County, Georgia, under date of June 5, 1953, both of which restrained defendants from enforcing said Union Shop Agreement, defendant has taken steps to fully comply with the restraints provided for therein and will continue to do so as long as the orders of those courts or the Temporary Restraining Order issued by this Honorable Court under date of June 8, 1953, are outstanding.

Wherefore, the premises considered, defendant does not contest but will faithfully obey, the Temporary Restraining Order heretofore issued by this Honorable Court, and consents to the issuance by this Honorable Court of a temporary injunction as prayed for by plaintiff pending the disposition of this cause of action on the merits and defendant further prays:

1. That this answer be treated as an affidavit of the facts herein set out;

2. That the court grant its declaratory judgment as to the validity of the Union Shop Agreement, attached hereto [fol. 17] as Exhibit "A", under the statutes and laws of North Carolina and of the United States, and that it declare the respective rights, status and other legal relations of the parties to said contract defendants herein;

3. And that defendant be allowed its costs herein and given such other and further relief as it may be entitled to in law or in equity.

John M. Robinson, Charlotte, N. C., W. T. Joyner, Security Bank Building, Raleigh, N. C.

Of counsel: W. S. Macgill, Southern Ry. Co., 15th & K Sts., NW, Washington, D.C.

(Duly verified.)

Exhibits "A" and "B" Referred to in the Foregoing Answer Are the Same as Plaintiffs' Exhibit No. 1.

In Superior Court of Mecklenburg County

Answer of Union Defendants

Come now all the defendants in the above entitled cause except Southern Railway Company (hereinafter referred to as "union defendants") and, for answer to plaintiffs' Complaint, say:

1. The union defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph (1) of the complaint, and therefore deny the same.

2. The union defendants admit the allegations contained in paragraph (2) of the complaint, except that they deny that all the union defendants are unincorporated. The union defendants allege that each of them, except Railway Employes Department of the American Federation of Labor, is a labor organization organized in accordance with the provisions of the Railway Labor Act (U.S. Code, Title 45, [fol. 18] Section 151, et seq.) and is the duly designated and authorized representative pursuant to that Act of the employees of Southern Railway Company of their respective classes or crafts. Railway Employes Department of the American Federation of Labor is an association composed of the seven union defendants first named in the Complaint.

3. The union defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph (3) of the Complaint, and therefore deny the same.

4. The union defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph (4) of the Complaint, and therefore deny the same.

5. The union defendants admit that the plaintiffs are not members and do not pay dues, fees or assessments to any

of the union defendants; they further admit that the union defendants, on the one hand, and Southern Railway Company and affiliated carriers, on the other hand, have entered into a so-called union shop agreement under date of February 27, 1953, a copy of which is attached to the Answer filed herein by Southern Railway Company; the provisions of said agreement are incorporated herein by reference and made a part hereof as if fully and completely set forth herein; the union defendants admit that the plaintiffs have been informed of the requirements of said agreement; except as herein specifically admitted, all other allegations of paragraph (5) of the Compiaint are denied.

6. The union defendants admit that the plaintiffs and other employees of the Southern Railway Company have been informed of the requirements of the agreement described in paragraph 5 hereof and that such requirements will be enforced. Except as herein specifically admitted [fol. 19] the union defendants do not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph (6) of the complaint, and therefore deny the same.

7. Paragraphs 7 and 8 of the Complaint set forth only conclusions of law requiring no answer; should either of said paragraphs be construed to contain any allegation of fact, such allegation is denied.

8. Further answering the complaint the union defendants aver that the agreement described in paragraph 5 hereof was entered into strictly in accordance with the authorization contained in Section 2, Eleventh, of the Railway Labor Act as amended by the Act of the Congress of the United States of January 10, 1951 (64 Stat. 1238; U.S.C., Title 45, Section 152, Eleventh); that said agreement violates no law nor the rights of any one but is a valid and properly enforceable agreement the enforcement of which is currently enjoined with consequefit great damage to the union defendants.

Wherefore, the union defendants pray that judgment be entered for the defendants, that all existing restraints upon the enforcement of said agreement be dissolved and that

the plaintiffs be assessed damages to compensate the union defendants for the damages they have suffered through being improperly restrained from having said agreement enforced.

J. B. Craighill, 609-613 Law Bldg., Charlotte 2, N.C.; Lester P. Schoene, Milton Kramer, Schoene and Kramer, 1625 K St., N.W., Washington 6, D.C.; Clarence M. Mulholland, Edward J. Hickey, Jr., Mulholland, Robie & Hickey, Tower Bldg., Washington 5, D.C., Attys. for Union Defendants.

November 9, 1953

(Duly verified.)

[fol. 23]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

AMENDMENT TO COMPLAINT

The plaintiffs, by leave of Court, hereby amend their Complaint in the above-entitled cause by adding thereto four additional paragraphs, to be numbered paragraphs 5a, 5b, 5c, and 5d, and reading as follows:

5a. That, as the plaintiffs are informed and believe, the periodic dues, initiation fees and assessments which the defendant Unions collect from their members and which, under the contract hereinabove referred to, plaintiffs, unless protected by the Court, will be required to pay in order to retain their employment with the defendant Southern Railway Company, have been, and are and will be regularly and continually used by the defendant Unions to carry on and finance insurance businesses, banking businesses and sundry other business enterprises which the plaintiffs are not willing to finance or support; that such uses of the plaintiffs' money by the defendant Unions will not be germane to collective bargaining and to compel the plaintiffs against their will to pay money to the defendant Unions

for such purposes will be unlawful, as is hereinafter set forth.

5b. That, as the plaintiffs are informed and believe, the periodic dues, initiation fees and assessments which the defendant Unions collect from their members and which, under the contract hereinabove referred to, the plaintiffs, unless protected by the Court, will be required to pay in order to retain their employment with the defendant Southern Railway Company, have been and are and will be regularly and continually used by the defendant Unions to carry on, finance and pay for political activities directly at cross-purposes with the free will and choice of the plaintiffs, including the election of candidates for public and governmental office whom the plaintiffs oppose and the defeat of other political candidates whom the plaintiffs support and [fol. 24] the enactment of legislation which the plaintiffs oppose and the defeat of other legislation which the plaintiffs support; that such uses of the plaintiffs' money by the defendant Unions will not be germane to collective bargaining and to compel the plaintiffs against their will to pay money to the defendant Unions for such purposes will be unlawful, as is hereinafter set forth.

5c. That, as the plaintiffs are informed and believe, under the contract hereinabove referred to, the plaintiffs, unless protected by the Court, will be required to become members of the defendant Unions and maintain allegiance and conformity to the rules, disciplines and edicts of the defendant Unions or else suffer in the course of their work and employment severe reprisals and punishment at the hands of the defendant Unions and their agents, which will be unlawful as is hereinafter set forth.

5d. That all of the aforesaid exactions, impositions, requirements and compulsions upon the plaintiffs against their free will and choice, unless the Court protects the plaintiffs therefrom, will be unlawful deprivation of the plaintiffs' property and liberty and un-

lawful invasions of the plaintiffs' rights to freedom of speech and expression, freedom of association and freedom of conscience; that the plaintiffs are entitled to the protection of such rights of property and liberty and freedom under the Constitution, common law and the statutes of the State of North Carolina; that the defendant Unions have asserted in this cause that the plaintiffs are deprived of such protection by an Act of the Congress of the United States, namely, the 1951 Amendment to the Railway Labor Act; that the plaintiffs are not, however, deprived of such protection by said Act of Congress, for that under the First, Fifth and Ninth Amendments to the Constitution of the United States, said Act of Congress is ineffective to deprive the plaintiffs of protection against the aforesaid unlawful deprivations of their liberty and prop-
[fol. 25] erty and the aforesaid unlawful invasions of their rights to freedom of speech and expression, freedom of association and freedom of conscience.

Blakeney and Alexander, By W. S. Blakeney, Attorneys for Plaintiffs.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

DEMURRER

Now Come the defendants in the above entitled case, other than Southern Railway Company, and demur to the Complaint on the grounds that it does not state facts sufficient to constitute a cause of action for the reasons and on the grounds that agreements of the type mentioned in the Complaint between a rail carrier and a labor union are specifically authorized and permitted under the federal law, including Section 2, Eleventh, of the Railway Labor Act, as amended by the Act of Congress of the United States of January 10, 1951 (64 Stat. 1238; U.S.C., Title 45, Section 152, Eleventh), notwithstanding any provisions of state laws to the contrary, the federal law taking precedence over state laws on the subject by reason of the fact that Congress has pre-empted the field, all as decided and held by the

Supreme Court of the United States in the case entitled Railway Employees' Department v. Hanson, 351 US 225, 76 S.Ct. 714, and by the Supreme Court of North Carolina in the case entitled Hudson v. Atlantic Coast Line R. Co., 242 NC 650, 89 SE 2d 441, certiorari denied 351 US 225, 76 S.Ct. 844; and on the other grounds and reasons set forth and discussed in the above mentioned decisions of the Supreme Court of the United States and the Supreme Court of North Carolina, to which reference is hereby made, which decisions specifically hold that such agreements are valid and binding and do not violate any constitutional or other legal rights of persons in the position of the plaintiffs in this action. Reference is also made to Moore v. [fol. 26] C & O R. Co., 198 Va. 273, 93 SE 2d 140, and Sandsberry v. International Association of Machinists, 295 SW 2d 412 (Texas Supreme Court).

This 17th day of January, 1957.

Lester P. Schoene, Milton Kramer, Clarence M. Mulholland, Edward J. Hickey, Jr., J. B. Craighill, Attorneys for the Defendants, other than Southern Railway Company, By J. B. Craighill.

Schoene and Kramer, 1625 K Street, N.W., Washington 6, D. C.

Mulholland, Robie & Hickey, Tower Building, Washington 5, D. C.

Craighill, Rendleman & Kennedy, 609-613 Law Building, Charlotte 2, N. C.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

ORDER OVERRULING DEMURRER, ETC.—
February 1, 1957

This Cause coming on to be heard at the January 28, 1957, Extra Civil Term of the Superior Court of Mecklenburg County, North Carolina, before the undersigned, Judge Presiding;

And Being Heard upon the pleadings herein, including the Amendment to the Complaint which the Court has al-

lowed the plaintiffs to file and the Demurrer which the defendant Unions have filed and upon argument of counsel;

And the Court Being of the Opinion that the plaintiffs have stated a cause of action;

Now, Therefore, It Is Ordered, Adjudged and Decreed that the Demurrer of the defendant Unions be, and it hereby is overruled and the defendant Unions are allowed thirty days in which to file further answer or other pleading;

And This Cause being further heard upon the pleadings [fol. 27] herein and upon the Affidavits filed by the parties and upon argument of counsel;

And the Court Being of the Opinion that the plaintiffs have made prima facie showing that unless protected by the Court, they will be unlawfully required to pay money to the defendant Unions for purposes not reasonably necessary and incident to collective bargaining with their employer and will otherwise be subjected to unlawful requirements and compulsions at the hands of the defendant Unions;

And the Court Being of the Opinion that the plaintiffs are entitled to injunctive relief, as hereinafter set forth;

Now, Therefore, It Is Ordered, Adjudged and Decreed that, until the merits of this cause are determined, the Temporary Restraining Order and Injunction heretofore issued by this Court is hereby maintained and continued in force and effect, and the defendants, and each of them, are hereby restrained and enjoined from placing any compulsion of any nature upon the plaintiffs in the course of the plaintiffs' employment with the defendant Railway Company, whereby the plaintiffs, against their free will and choice, would be required to join or take any oath of allegiance to the defendant Unions or conform to any rules or disciplines of the defendant Unions or pay any money to the defendant Unions.

This Order Is, However, Subject to the following conditions:

1. The defendant Unions shall be permitted, upon proper notice, to present proof to the Court as to what portion of the periodic dues, initiation fees and assessments, which they desire to collect from the plaintiffs, will be reasonably necessary and incident to collective bargaining between the defendant Unions and the plaintiffs' employer, the defendant Railway Company, [fol. 28] and upon the making of such proof to the satisfaction of the Court, this Order shall have no application or force or effect with respect to such portion of such periodic dues, initiation fees and assessments or the imposition and collection thereof under the terms of the contract referred to in the pleadings.

2. This Order shall be effective only for the protection of persons who are individually named as parties plaintiff herein or who become added by order of court as such within thirty days from date hereof.

3. Within thirty days from the date hereof there shall be filed in the Office of the Clerk of the Superior Court of Mecklenburg County, North Carolina, a bond or bonds, approved by the said Clerk, in a total amount of $72.00 multiplied by the number of plaintiffs, by which the plaintiffs undertake and agree that, in the event it is finally determined that this Order should not have been issued, they shall pay to the defendants such damages, up to the aforesaid amount, as the defendants may have suffered by reason of the issuance of this Order.

This the first day of February, 1957.

Susie Sharp, Judge Presiding.

[fol. 30]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

ANSWER OF UNION DEFENDANTS TO AMENDMENT TO COMPLAINT

Come now all the defendants in this action other than the Southern Railway Company, and, for answer to the Amendment to the Complaint, say:

1. They are without knowledge or information sufficient to form a belief concerning the willingness of any of plaintiffs to finance or support any activities described in paragraph 5a, and therefore deny said allegation. They deny the remaining allegations of paragraph 5a.

2. They are without knowledge or information sufficient to form a belief concerning the allegations of the first clause of paragraph 5b, and therefore deny the same. They deny the remaining allegations of paragraph 5b.

3. They deny the allegations of paragraph 5c.

4. They deny the allegations of the first, second, and fourth clauses of paragraph 5d. The answer of these defendants in this section is in the record in this case; except as alleged therein they deny the remaining allegations of paragraph 5d.

Wherefore, they pray that judgment be entered for the defendants; that all existing restraints upon enforcement of the union-shop agreement be dissolved, and that damages be assessed against the plaintiffs to compensate the union defendants for the damages they have suffered by being improperly restrained from having said agreement enforced.

[fol. 31] Milton Kramer, Schoene and Kramer, 1625 K Street, N.W., Washington 6, D. C., J. B. Craighill, Craighill, Rendleman & Kennedy, 607 Law Bldg., Charlotte 2, N. C., Attorneys for Union Defendants.

(Duly verified.)

[fol. 32]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

JUDGMENT—April 24, 1958

This Cause Having Come on to Be Heard before the undersigned Judge presiding over the Superior Court of Mecklenburg County, North Carolina, and a jury having been impaneled to try the issues between the plaintiffs and the defendants and, at the close of the plaintiffs' evidence, the defendants named below, being all of the defendants other than Southern Railway Company, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the Brotherhood of Railroad Signalmen of America, having demurred to the evidence and moved for a judgment as of nonsuit, and the Court being of the opinion that the same should be allowed;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the plaintiffs be, and they hereby are nonsuited and this action is hereby dismissed as to the following defendants:

International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and [fol. 33] Helpers of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; Sheet Metal Workers International Association; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; Brotherhood of Maintenance of Way Employees; The Order of Railroad Telegraphers; National Organization of Masters, Mates and Pilots; National Marine Engineers Beneficial Association; American Train Dispatchers Association; Railroad Yardmasters of America; and Railway Employees' Department of the American Federation of Labor.

This Cause, however, is specifically retained for further proceedings with reference to the remaining defendants, to wit, Southern Railway Company, the Brotherhood of Rail-

way and Steamship Clerks, Freight Handlers, Express and Station Employees, and the Brotherhood of Railroad Signalmen of America.

This 24th day of April, 1958.

J. Will Pless, Jr., Judge Presiding.

[fol. 34]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

FINAL JUDGMENT (Pless, J.)—May 15, 1958

This Cause coming on for trial before the undersigned and a jury, and having been tried as appears of record, and the jury having answered issues as follows:

1. Do the defendant Unions use dues and fees which they collect from railroad employees in support of or opposition to legislation which is not reasonably necessary or related to collective bargaining?
Answer: Yes.

2. Do the defendant Unions use dues and fees which they collect from railroad employees to influence votes in elections to public office?
Answer: Yes.

3. If so, is the same necessary or reasonably related to collective bargaining?
Answer: No.

4. Do the defendant Unions use dues and fees which they collect from railroad employees to make contributions to the campaigns of candidates for election to public office?
Answer: Yes.

[fol. 35] 5. If so, is the same necessary or reasonably related to collective bargaining?
Answer: No.

6. Is the Brotherhood of Railway Clerks death benefit system necessary or reasonably related to collective bargaining?
Answer: No.

Now, Therefore, It Is Ordered, Adjudged and Decreed that the defendants, and each of them, are hereby restrained and enjoined from placing any compulsion of any nature upon the plaintiffs, individually named as such in the caption of this case, in the course of their employment with the Defendant Railway Company, whereby they, the said plaintiffs, against their free will and choice would be required to join the Defendant Unions, or conform to any rules or disciplines of Defendant Unions, or pay money to said Unions, to wit, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the Brotherhood of Railway Signalmen of America.

This Order, however, is subject to the following conditions:

The Defendant Unions shall be permitted, upon proper notice, to present proof to the Court, not conflicting or inconsistent with the findings of the jury as hereinbefore recited, as to what portion of the periodic dues, initiation fees and assessments, which they desire to collect from the plaintiffs, will be reasonably necessary and related to collective bargaining between the defendant Unions and the plaintiffs' employer, the Defendant Railway Company, and upon making of such proof, not conflicting or inconsistent with the findings of the jury as hereinabove recited, to the satisfaction of the Court, this Order shall have no application or force or effect with respect to such portion of such periodic dues, initiation fees or assessments or the imposition and collection thereof under the terms of the contract [fol. 36] referred to in the pleadings.

The cause is therefore retained for such further hearings, either with or without a jury, and such further Orders as may seem appropriate should the proof referred to above be offered by the defendants.

It Is Further Ordered that the Defendants pay the costs of this action.

Dated this 15th day of May, 1958.

J. Will Pless, Jr., Judge Presiding.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

APPEAL ENTRIES OF BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES AND BROTHERHOOD OF RAILWAY SIGNALMEN OF AMERICA—May 15, 1958

Upon the coming in of the verdict, the above mentioned defendants (being all of the defendants other than Southern Railway Co.) moved to set aside the verdict as being against the greater weight of the evidence and for a new trial. Motion overruled, and said defendants except. Exception #99.

Said defendants then moved for a new trial as a matter of law for errors committed during the progress of the trial, assigned and to be assigned. Motion overruled, and said defendants except. Exception #100.

Said defendants then moved to set aside the verdict and for a new trial on the grounds that there is insufficient evidence to support the verdict. Motion overruled, and said defendants except. Exception #101.

Said defendants then moved for the entry of a judgment in favor of defendants and denying the restraining order and relief sought by the plaintiffs, notwithstanding the verdict. Motion overruled, and said defendants except. Exception #102.

Exception #103:

Said defendants tender to the Court a proposed judgment, as appears of record, in favor of the defendants and [fol. 37] denying to plaintiffs the injunctive or other relief sought by them in this action. The judgment tendered by the said defendants refused by the Court, and the said defendants except.

Exception #104:

Judgment signed, as appears of record. To the judgment and to the signing and entry of the judgment and to the rulings of the Court therein contained, the said defendants object and except, and in open court give notice of appeal to the Supreme Court. Further notice waived. By consent,

and in the discretion of the Court, appellants are allowed 65 days within which to prepare and serve case on appeal, and the appellees are allowed 30 days thereafter within which to serve counter-case or file exceptions. Appeal bond in the sum of $100.00 adjudged sufficient.

This 15th day of May, 1958.

J. Will Pless, Jr., Judge Presiding.

[fol. 39] Mr. Hewson: For the record, if the Court please, in paragraph 3 of the Further Answer of the Defendant Southern Railway Company, it is stated that, among other things, that the principles involved in the union shop agreement are unsound, and improper and are subject to question as to their validity and legality. This Answer was filed some considerable time before the decision of the Supreme Court of the United States in Railway Employees v. Hanson, and in 351 US, which decision is at least governing on us all, leaving in this case only the questions or issues of fact or questions or issues of law concerned with the use of the union funds, and those are matters strictly, as we understand them, between the plaintiffs and the defendant unions, and the Defendant Southern Railroad takes no position as to them at all.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

PLAINTIFFS' EVIDENCE

MIRIAM P. THOMPSON testified for plaintiffs:

I work for the Southern Railway Company in the Engineering Department doing stenographic work. I have worked there for a little over 8 years. I am not a member of any labor union at the Southern Railway and do not [fol. 40] wish or desire to become a member of any labor union.

I am very much opposed to being required or compelled to belong to a labor union in order to retain my employment there. I am opposed to being required to pay money each month to a labor union which the union may use for purposes upon which the union decides.

Q. What is your position with respect to being required to pay dues or money regularly to the union if a part of it be used for insurance arrangements which you have had no voice in establishing?

Mr. Kramer: Object, your Honor; there is no evidence that any of the Union dues are used for such purpose.

* * * * * * *

Court: Do you intend to offer evidence to show where part of the money is being used for insurance policies?

Mr. Blakeney: Yes, indeed; by insurance, I mean the so-called death benefit insurance provision.

Court: I think that is competent upon that statement; the objection is overruled. (Exception #1.)

A. I am opposed to it; I feel like I should have my own freedom to choose the company I want to and the insurance I want, and I don't believe anybody should make me take what I don't want.

Q. If the evidence in this case should show that the dues money which the union is collecting from railroad employees was used in part to bring about the enactment of laws and bring about the defeat of other laws, are you agreeable to having money collected from you by the union to be used for such purposes?

A. I am not agreeable for them to do it.

Q. If the evidence in this case should show that a part of the money which is collected by the unions from railroad employees is used for the support of some political candidate, and for the defeat of another political candidate, what is your position with respect to such use of monies [fol. 41] collected from you?

Objection on the ground there is no evidence that any part of the dues is used for such purposes. Overruled on the statement of counsel for plaintiffs when he will offer evidence that dues are so used. (Exception #2.)

Q. Mrs. Thompson, will you state briefly the reasons why you are opposed to money being collected from you by compulsion and used for such purposes as I just outlined, if the evidence should show that the money will be so used?

A. I think every American has a right to choose for himself what he wants to do with his money he earns for himself with his own hands without having to go through a union to do it.

Motion to strike answer as not responsive to question. Motion denied. (Exception #3.)

Cross examination.

The laws which the union might support or which the union might oppose to which I object would be the right-to-work law for one thing because I am in favor of the right-to-work law and I am sure the unions are not. Another law would be part of the Railway Labor Act, specifically what we are in court here fighting today. That is the union shop agreement provisions of the Railway Labor Act. Those two laws specifically are the ones I have in mind. With respect to my knowledge that the Union opposed the right-to-work law in North Carolina, I am sure I have read that the unions are opposed to it; I feel sure that they are. Those are the only specified things that I can think of now. Of course, not being too familiar, I actually don't know what they are for and against.

CRAVEN SMITH testified for plaintiffs:

I lived in Charlotte since 1950. I came here from Greensboro. I worked for the Southern Railway Company for a little over 36 years. I do clerical and accounting work. I [fol. 42] am not a member of any railroad labor union. I do not wish or desire to join such a union. I am opposed to being required or compelled to join such a union in order to maintain or retain my job with the Company. When I went to work for the Southern Railway Company 36 years ago, there was no requirement that I join a union; the first time that there was any such requirement was in 1953.

That was after I had been working for the Railroad about 31 years.

Q. If the evidence in this case, Mr. Smith, should show that the railroad unions require employees of the Southern Railway to pay money to them in order for those employees to keep their jobs, and that the railway unions then take that money and use part of it to support certain legislation and to oppose other legislation, to support and influence campaigns for certain political candidates and elect certain candidates, and to defeat other political candidates, what is your position with respect to such use of money dues taken from you against your will?

Objection on the ground that there is evidence that money will be so used. Overruled. (Exception #4.)

A. I am definitely opposed to such activity.

I am opposed to such use of my money because it strikes at the foundation of our American life. I think every American should be free to join what he pleases and use the money that he earns in any way that he wants to.

Cross examination.

I presume that it is the Clerk's Union that I would be required to join by the Union Shop Agreement. I have been told that the monthly dues in the Clerk's Union are $2.25 per month. I do not know when the Brotherhood of Railway Clerks first started to bargain for the clerk craft on the Southern Railway Company. I am opposed to the Railway Clerks engaging in legislative activity. I can't see why engaging in legislative activity would bring wage [fol. 43] benefits. I am not opposed to having a liberalization of the benefits which I get from the Railroad Retirement Board in the event that I am fired. As to whether I know of any way those benefits could be liberalized other than by legislative action, I think it is economical whenever the Railroad Retirement Board takes it in it is up to them to disburse it. That is my idea of legislative activity to disburse what it takes in. I can't see where the law could increase it, all the money that they have to expend.

Redirect examination.

I know that the North Carolina has the right-to-work law. I am in favor of that law. I am not in favor of having any money taken from me against my will and used to repeal that law. I know that the 1951 Amendment of the Federal Railroad Labor Act made the union-shop agreement possible. I am not in favor of that law but I am against it. I am not agreeable to having money taken from me against my will and used to maintain that law in effect.

George E. Atwell testified for plaintiffs:

I work for the Southern Railway Company. I have worked for that Company since November 1, 1919, approximately 39 years. When I went to work for the Southern there was no requirement that I must join and pay dues to any labor organization. That requirement first came along as far as I can recall in May or April, 1953. I am opposed to being required to join the union and pay dues to it in order to hold my job.

I was a member of a labor union for a short while during my employment by the Southern Railway Company. That was either in 1921 or 1922. At that time it was not compulsory that I belong; it was a voluntary matter. I ceased to be a member of the union in 1921 or 1922 when a strike was called that was considered a Wildcat Strike and I [fol. 44] believe it was in sympathy with striking employees of the old AB & A of Georgia and it lasted, of course, only a few days. I think two or three days, something like that. I was not in agreement with that strike. Since then I have not been a member.

When the requirement of belonging to a union and paying dues to the union came along a few years ago, I employed counsel and secured a temporary injunction against enforcement of the agreement that the Southern Railway Company had entered into with the Clerks organization. I did that on my own. That was in Guilford County. That is not where I lived. I lived in Rowan County. My counsel lived in Guilford County. That suit was brought in Greensboro. I still live at Salisbury in Rowan County and still work for the Southern Railway. The injunction which I secured

was dismissed in April last year. I did not agree with the dismissal but acquiesced in it on the advice of counsel that it was the only thing to do in the light of the Supreme Court decision as it was explained to me. After that suit was dismissed I joined and became a party plaintiff in this case of Allen against the Southern Railroad down here in Charlotte. That was under the provisions of the Order in which Judge Sharp permitted additional parties to come into this case.

Cross examination.

By a wildcat strike I mean one that was not called by the leader. It was a local strike. It was not authorized nationally but was called by a local chairman as I recall. Essentially the reason I quit the union was because the men went on strike without authorization. The case I brought in Greensboro was dismissed. My counsel did not oppose it being dismissed. After it was dismissed I came into this case as a plaintiff.

Counsel for the defendant unions moved that Atwell's name be stricken as one of the plaintiffs because as to him, the issues had been adjudicated in a prior suit. The court took the motion under advisement.

My wage rate at the present time is approximately four [fol. 45] times as high as it was in 1926. I know that 1926 was when the Railway Labor Act was enacted. At that time I did not get paid for holidays that I did not work. I get paid now for holidays that I do not work if I work the day before or day after. In 1926 I did not get any paid vacation. Now I get three weeks vacation. Three weeks vacation is improvement over the amount of vacation I got five years ago. I believe that back in 1943 I got one weeks paid vacation and that it has been an additional week since 1953. Before 1943 I do not recall what the vacation provision was. I know that the present pay for holidays is the results of agreements negotiated by the Labor organization and the Railway Company. I don't know how it came about that we had these various vacations. I don't know the details. Oh, it is probably so that it was provided for by collective

bargaining agreements. I did not understand the question in that light. As far as I know, our two weeks vacation provision and the one week vacation were obtained the same way. I do not know whether I have received any increase in wages other than those obtained for me in collective bargaining agreements of the Brotherhood of Railway Clerks.

Redirect examination.

It would be pretty hard for me to answer a question as to whether I know that increase in wages and improvements which I have received would have been obtained by myself or on my own merits without reference to collective bargaining by the union.

It is natural to assume that if you had stayed with the Company thirty some odd years some increase would be due you but it is problematical as to whether or not it would have been received.

Q. You say that your wages are four times today what they were in 1926? Is the purchasing power of your dollar today about one-fourth of what it was in 1926?

[fol. 46] Objection on the ground that witness is not qualified to answer the question. Overruled. (Exception #5.)

A. Yes. There is no way of knowing what the union may have gotten and what I may have gotten on my own merits. I have worked for the Railroad Company 39 years.

Q. And your services have been satisfactory to the railroad?

Objection on the ground that only the Railroad could answer the question. Overruled. (Exception #6.)

A. Yes, as far as I know. The railroad has never said anything to the effect that there was anything wrong with my services.

I do not agree that I should pay dues to anything that I might be opposed to. I can't exactly explain it but if I thought that the dues were being used for things that I agree with I would not object.

Recross examination.

I am not opposed to the union spending money for anything that I might agree with, but I am opposed to spending money for anything that I do not agree with such as the right-to-work law which I think they are opposed to. I don't exactly say for sure, but I read it in the papers and I certainly am opposed to them advocating or endorsing candidates.

Q. Do you know that the unions endorse candidates?

A. Yes.

Q. How do you know that?

A. I read some of their papers.

Motion to strike answer as obviously hearsay. Denied. (Exception #7.)

I would say that when the unions endorse candidates who are in favor of continuing that portion of the Railway Labor [fol. 47] Act which permits the Union Shop, I am opposed to that. I can name one instance of a candidate to whom I am opposed, Adlai Stevenson. I do not know whether the Railway Clerks endorsed Adlai Stevenson or not.

The wildcat strike may have been in 1921. It was a clerical strike as I understood it on the old A B & A Railroad down in Georgia. I believe they were one or two days that our local place where they went out in sympathy with the other striking employees. I believe one such instance occurred in the last several years but I'm not sure. During the entire time that I've been employed on the Southern Railway I do not know of any other strike generally on the Southern.

Redirect examination.

I think there would have been strikes called by the railroad unions on the railroads of the country.

Recross examination.

In my entire experience I do not know of any instances in which the Brotherhood of Railroad Clerks has called a strike on the railroads of the country.

MRS. MARY B. CROSBY, a witness called by the plaintiffs:

I work for the Southern Railway Company as a classified accountant doing clerical and accounting work. I have worked there for 32 years. I am not a member of any railway labor union. When I went to work there I wasn't required to belong to or pay dues to any labor union. I first heard of being compelled to belong to a union in 1953. I do not wish to join any union or pay dues.

I am opposed to any compulsion with respect to being required to be a member of or to pay money to the Union.

Q. If the evidence should show that the money which you might be compelled to pay to the union would be used [fol. 48] in part to influence the passage of laws, or to defeat the passage of legislation, or to influence the election of certain candidates and defeat the election of other candidates, what is your position with respect to such uses of your money?

Objection—Overruled—Exception #8.

A. I am opposed to it. I am opposed to use of my money to influence the passage of laws or effect the election of candidates because I think that as individuals we should have the right to make our own decisions about such matters.

SHIRLEY CARRIKER, a witness called by the plaintiffs:

I live in Cabarrus County. I work for the Southern Railway in Engineering Department here in Charlotte as a file clerk. I am not a member of any railroad labor union. I am opposed to being required to join a union and I am also opposed to being required to pay part of my earnings to the union because I think that people should have the right to make up their minds. If the union could show us and persuade us to join, I think it would be all right but I think to force and compel people is wrong.

REBECCA SCHOLL, a witness called by the plaintiffs:

I work for the Southern Railway doing stenographic work in the Engineering Department. I do not belong to any labor union. I oppose being required to belong to a labor union. I am also opposed to being required to pay part of my earnings to the union.

Q. Now if the evidence in this case should show that a part of the dues which you would be required to pay to the union under the union shop agreement would be used by the [fol. 49] union to seek the passage of certain laws or defeat other laws, and support the candidacy of certain political candidates, and defeat other political candidates, what is your position as to the use of your money which you would be compelled to pay in those respects?

Objection—Overruled—Exception #9.

A. I would like to feel that I could support the candidates whom I wanted to, if I gave any money to the campaign I would like to have it on the candidate whom I support and not from someone else selecting.

Cross examination.

I went to work for the Southern in 1952. At that time I did not know that the Railway Labor Act had been amended so that it permitted the union shop agreement. My first employment with the Railroad was in 1952. That was with the Southern Railroad. Miss Carriker went to work for the Southern just prior to the time that I did. I do not know how much prior.

Redirect examination.

At the time I went to work for the Southern there was no contract in effect there which required people to belong to the union in order to work there. There was nothing in effect that required people to pay part of their earnings to a union.

SHIRLEY CARRIKER, a witness for the plaintiffs, recalled:

I went to work for the Southern Railway Company on April 30th, 1951. When I went to work there there was no kind of contract or agreement of any sort that I know that required people to belong to a union to work there. At the time I went to work there there was no arrangement by which any part of your earnings would have been turned over to a labor union.

[fol. 50] R. P. POWELL, a witness called by the plaintiffs:

I live in Charlotte and have lived here for 36 years. I have worked for the Southern Railway for 45 years. I started to work for the Southern in 1913. My work is mostly in connection with materials and equipment. I am not a member of any labor union at the Southern Railway. My kind of work would come under the B. R. C. of America, American Brotherhood of Railway Signalmen. I have been notified by the union that I must now become a member and pay dues in order to keep my job. I am opposed to doing so because I think that it is my own individual right to decide about joining any organization in that line.

Q. If the evidence in this case should show that you will be required to pay a part of your earnings to the union in order to stay in your employment with the Southern, and that a part of the dues that you so pay to the union would be used to influence legislation, and to influence the election of political candidates, what is your position with respect to such use of the money?

Objection—Overruled—Exception #10.

A. I would be opposed to that.

During the 45 years that I have worked for the Southern I have learned the trade of the particular kind of work that I am engaged in. The Southern Railway job was the first job I ever had. After my 45 years of work in the Railroad trade I could not readily take up another work nor could I readily go to another railroad and readily get a job in my line of work because my age would be against me.

Q. Do the other railroads have the same union shop agreement?

Objection on the ground the witness is not shown to have any information on the subject. Objection—Overruled—(Exception #11.)

[fol. 51] A. I don't know.

If I was forced out of my job for failure to become a member of the union or failure to pay the union there would not be any kind of work I could go into at my age unless I was just fortunate enough to pick up something.

Cross examination.

Having been employed by the Southern for 45 years I am getting close to retirement age. When I retire I am looking forward to receiving a monthly check from the Government every month. I do not know what agency of the Government that will come from. It comes from money that I put in it each month. I have been putting money in it monthly since 1937. I do not know on what basis my annuity would be computed. I do not understand about getting credit for thirty years. I know it has a clause in there somewhere about 30 years but I don't know what. You can't get your full retirement until 30 years. I know I get credit for 30 years although I have been paying taxes for only 21 years. I know the Railway Retirement Act is the legislation under which I get my annuity. I don't know that the Brotherhood of Railway Clerks expended considerable effort to get that act enacted. I contributed all of my money to go to pay for that, they don't contribute anything for it at all. I don't know how many times since 1936 the Railway Retirement Act benefits have been increased. I do not know how it came about that it got increased. I did not know it had been increased. I have got nothing on it at all. Prior to 1937 it was not in effect and I could not get any retirement benefits.

I have never been furloughed from my work or laid off since 1939. Some of the men I have worked with have been laid off. I do not know whether they got benefits from the

Railway Unemployment Insurance Act. I do not know whether they got any unemployment benefits before 1939.

With respect to which legislative activity of the Brotherhood of Railroad Signalmen I find objectionable, my objection is against being forced into it and paying money into [fol. 52] it. I don't know whether the Brotherhood of Railway Signalmen took any part in getting the Railway Retirement Act enacted. I don't know how the Railroad Retirement Act came to be enacted. I don't know who had a part in it.

Redirect examination.

Q. If the evidence in this case should show, Mr. Powell, that the railroad unions, including the Signalmen's Union, had a great part in getting the Railway Labor Act amended so as to permit people to be forced into the union, what is your position with respect to the union accomplishing that, if they did?

Objection on the grounds of being a leading question. Objection—Overruled—Exception #12.

A. I would be opposed to being forced into it. I am for the North Carolina Right-to-Work Law.

Q. If the Railway Labor Unions are trying to get the North Carolina right-to-work law repealed, or cancelled out, are you with the union on that or against it?

Objection on the grounds that the question is purely speculative. Objection—Overruled—Exception #13.

A. I would be against it.

I would not be agreeable to having my money taken from me in any amount and used by the union to accomplish the wiping out of the right-to-work law.

Recross examination.

I was once a member of the Brotherhood of Railway Signalmen in 1916. I was a member for a few years, not too many. I do not know just how many. I left because I felt I would be better off outside. They never did give me anything. I never did ask them for anything and have

not for the last 45 years with the Railroad Company. I have received increases in wages other than those obtained [fol. 53] by collective bargaining. These other increases were what the railroad has given me. The railroad gave it to me on account of work I had done. I don't know whether the changes in wage rates were pursuant to collective bargaining agreements made by the Brotherhood of Railway Signalmen.

We get paid for holidays. I have always been paid for them for quite a while. I think the reason the Southern Railway Company now pays me for holidays since 1954 and did not pay for them before is because all the companies do. I guess they do the same thing.

I don't know whether the Brotherhood of Railway Signalmen engage in activity now that it did not engage in the period of 1916 to 1920 because I have not been affiliated with them. I really do not know whether they engage in the same activity now as when I was a member. I object to their activity today. At the time I was not forced into it. I do not know the activity of the union right now because I do not belong to it. I do not read the Signalmen's magazine.

Redirect examination.

Q. Mr. Powell, just one more question. During the 45 years that you have been working for the Southern, would you have obtained and received various improvements and increases whether there had been any union or not?

Objection on the ground that the witness is not qualified to answer and that the question is purely speculative. Objection overruled—Exception #14.

A. Yes, I think so.

I got some of the raises that I got on my own merit. I do not figure that everything I got in 45 years was due to somebody. I figure that part of it was on my own efforts.

Recross examination.

When I refer to increases which I got on my own efforts I have reference to the fact that I received other jobs when

I was on the same jobs. I am talking about increase in [fol. 54] wage rates because of promotion and not increases while on the same job.

DELORES SHEETS, a witness called by the plaintiffs:

I live in Charlotte and work for the Southern Railway. I have worked there since April 1, 1944 doing filing for the General Superintendent of Transportation office. I am not a member of any labor organization.

Q. Is it your wish or desire to become a member?

A. No sir.

Mr. Kramer: Your Honor, I object to this line of questions concerning the wishes of the particular witness. You may recall when you examined the jury, by Mr. Craighill's questions concerning their opinions and beliefs in Union shop, and Mr. Blakeney interposed that the legality or desirability of a Union shop was not in issue in this case, when we read the pleadings yesterday, it appeared that Mr. Blakeney is still challenging the validity of a Union shop agreement, but I take it he was committing himself by his statement that the legality of an agreement is not any longer in issue, that all that is in issue he said was whether we could spend money of Union funds for various purposes other than what he considers is strictly that of collective bargaining, and if that is all that is left in the case, all of these questions are completely irrelevant to such issue.

Mr. Blakeney: If Your Honor please, of course the United States Supreme Court has ruled on a part of this case. Exactly what the Supreme Court has ruled is one of the things that we are going to have to try to work out in this very case. The Supreme Court has certainly ruled that the payment of money to support the purposes of collective bargaining can be required and compelled. It [fol. 55] is our contention that the Supreme Court has ruled nothing beyond that. Now the Union Shop Agreement which has been enforced upon these people requires membership, and requires the payment of money. I take it therefore that the Supreme Court decision still leaves open

the question of whether this membership can be required and the question of whether the use of this money for purposes other than collective bargaining can be required, that is what is left open as I understand it.

Mr. Kramer: Your Honor, perhaps Mr. Blakeney is correct, it is a legal one. I call Your Honor's attention, and Mr. Blakeney's as well, to the identical contract in the Hanson case, except for the name of the railroads was exactly identical with the contract we have here down to the last comma, now if that is a fact, and it unquestionably is a fact because the record in the Hanson case is available, then the Supreme Court unquestionably held that this contract, this very contract is valid and reversed the Supreme Court of Nebraska for holding that it was not valid, so it is beyond question that this contract, these very words constitute a valid agreement between the Union and the Southern Railroad. Now if that is so, then the wishes of any employee of the Southern Railroad concerning their joining the Union voluntarily or involuntarily, are totally irrelevant. And this Mr. Blakeney says he concedes, that the Union contract was valid.

Mr. Blakeney: I conceded that the Supreme Court held that this Union shop contract like this one, and therefore this one, that a Union shop contract such as this one is valid to a certain limited extent. It is my understanding, if I may repeat, that the Supreme Court held it is valid to this limited extent only, namely that money can be required from an employee to support collective bargaining, and nothing else could be required. Now if this contract requires other things, then the United States Supreme [fol. 56] Court has not ruled that such can be validly required of these people. One of the things that this contract requires is membership. The Supreme Court, I can't understand to have held, that membership could be compelled or required. Therefore I intend to ask the witness is she agreeable to membership, or is she opposed to it, and if she is opposed to it, then there is no compulsion upon her to make her become a member under this contract which the Supreme Court has not held to be permissible.

Mr. Craighill: If I may interject something, I agree with him, the questions I asked the jury was whether or

not they thought it was wrong for a contract to require a person to join a Union in order to keep their jobs, and Mr. Blakeney at that time objected to the question, and Your Honor, on the grounds that that was not at issue in this case, it was my understanding that it was on that basis that Your Honor ruled that people or members of the jury who thought it was wrong in principle should still be allowed to sit on the jury. So therefore it seems to me that Mr. Blakeney having taken that position, that it is wrong now for him to continue to question these witnesses about the very thing that he says is no longer at issue in this case.

The Court: Gentlemen, I regard the questions that Mr. Blakeney is asking now as being rather preliminary in that he is seeking to bring himself within what he considers a possible exception to this contract, that the Supreme Court having upheld in effect this identical contract, having said that the assessments imposed under it are not germane to collective bargaining, then I assume that he will eventually attempt to offer evidence intended to show that the assessments are not germane to collective bargaining. These questions are for that, I suppose.

Mr. Kramer: Your Honor, may we understand this, that unless he shows assessments are not used for collective bargaining, I mean assessments as distinguished from [fol. 57] dues, as the Supreme Court intended them to be, then all of his testimony will be stricken out?

The Court: No, the Supreme Court in one place uses the word "dues," and in another assessments, and then comes along to exactly the same conclusion. They said one time that "the exaction of dues used as a cover for forcing ideological conformity," etc., and in another place they say that "assessments are in fact imposed for purposes not germane to collective bargaining."

Mr. Blakeney: That is exactly right, Your Honor, the Supreme Court uses the words dues and assessments interchangeably, and did not intend to make any distinction between them, and why under the sun should there be any difference?

Mr. Kramer: Under the last issue I think it is futile to argue now.

The Court: I can understand that theoretically there is a difference between assessments and dues, and it may be that the Supreme Court has made some distinction, but the Supreme Court did not distinguish between them in this decision because it says assessments in one place and dues in another and got the same result. You may proceed, objection overruled.

Mr. Kramer: I would like to keep on objecting to that kind of question to this and other witnesses.

The Court: The only way you can do is make your objections at the time, Mr. Kramer, you need have no reluctance to do it and you will have an exception.

Q. Miss Sheets, what is your position with respect to being required to become a member in order to retain your job with the Southern Railroads?

Objection—Overruled—Exception #16.

[fol. 58] A. Well, I never have believed in force; I think the Union should get their members like anybody else, not by force, by law.

If the union should use a part of the dues and money which it collects under the union shop contract with th Southern Railway to support certain legislation or opposes other legislation I would oppose that because I much prefer to give my money to my own campaigns, to the campaigns that I am interested in. The unions might not be supporting the ones that I am interested in.

Q. If the evidence should tend to establish or establish that a part of such money would be used to support certain candidates and to oppose other candidates—

Objection—Overruled—Exception #17.

A. I oppose that too and I would like to make my own decision and give my own money.

I have had personal experience twice with respect to strikes on the Southern Railway. I know once in 1948 and once in 1950 they called the strike and both times our jobs were abolished. I just went and worked a few hours each day and did not get any pay for several days. I went right to my desk and helped them all I could. I just don't

believe in strikes. We did not get any pay for that so, therefore, the unions brought me a loss. And then twice our jobs were abolished and we had to bid them in again completely.

Cross examination.

These strikes in 1948 and 1950 were not called by the Clerks Union and the clerks were not on strike. The Clerical Department is where I work. At that time the clerks were not organized. Some of the employees were on strike. Then the railroads abolished the job and then another time in 1950 the Government took over. It was in such a shape that the Government ran it for a while until they could straighten things out. As to who was on strike it looked to me like all the other railroads in the nation, I think. [fol. 59] It was the operating unions that were on strike, the engineers, firemen and conductors. And yet they took it out on us. I worked for a few days during the strike and did not get paid for it. The reason that I did not get paid is because the railroad abolished our jobs. I was not required to work but I wanted to show my sympathy. The Brotherhood of Railway Clerks was not one of the unions on strike but we were affected by it just the same because we lost our jobs as a result of the strike.

Bickett Bass, a witness called by the plaintiffs.

I work for the Southern Railway doing clerical work in the Communications Department. I am not a member of any labor union.

Q. Is it your wish or desire to become a member of any labor organization?

Objection—Overruled—Exception #18.

A. No, sir.

Q. What is your position, Mr. Bass, with respect to being required or compelled to become a member in order to retain your job with the Southern Railway?

Objection—Overruled—Exception #19.

A. I am not in favor of being compelled to join.

Q. If the evidence in this case should establish that a part of the dues which would be required of you in order for you to continue your job with the company under the contract now in effect there, if the evidence should establish or tend to establish that a part of such money would be used to support certain legislation, certain candidates, oppose other legislation and oppose other candidates, what is your position with respect to such use of your money?

Objection—Overruled—Exception #20.

[fol. 60] A. I am opposed to it.

By Mr. Blakeney:

Q. If the evidence in this case should establish that a part of the dues which would be required of you in order for you to continue your job with the company under the contract now in effect there, if the evidence should establish or tend to establish that a part of such money would be used to support certain legislation, certain candidates, oppose other legislation and oppose other candidates, what is your position with respect to such use of your money?

Objection—Overruled—Exception #21.

A. I am opposed to it.

I had the experience with my job being affected as a result of a dispute between the union and the company. I was on a monthly rated job and the union took my job over and gave me a cut in salary and took a week vacation away from me, took a year's salary insurance policy away from me and now they want me to join and help pay for taking it away from me.

Cross examination.

I have been an employee of the Southern Railway since 1949 except for three months, as a clerk. The three months was because my job was abolished on account of the strike in 1950. When I went back I had to bid on the old job. I was furloughed during those months but went to our Signal Department. I had been a signalman before from

1945 to 1948. I changed from signalman to clerk in 1948. My pay as signalman was not higher than my pay as a clerk.

I never have seen a citizen yet who was in favor of being compelled to do a thing. I'm in favor of being compelled to do what is right. I am in favor of being compelled to do [fol. 61] things I don't want to do if they are right. When I said earlier that the Union took the job away from me and took over I meant that I still carry the same title as I did before the union took the job over. I still carry the same title as I had when I was on the accepted position at a monthly rate. Now I am on a daily rate, making less money and all the privileges taken away from me. The boss told me that it was the union that initiated this proposal to have this job taken away. I was in an exempted job from 1951 to December 31, 1955. I did not go into a position that was not exempt in December 1955 or January 1956.

The union took my job over and put me on a daily rate. I was on an exempt job in 1953. An exempt job is one that is appointed. An exempt job is available to anybody that they see fit regardless of seniority. When I was on an exempt job I was told that I was not subject to the union shop agreement. I was in such an exempt job from 1951 to 1955.

Redirect examination.

I am subject to the union shop agreement today.

[fol. 62] DOROTHY IRENE BALL, a witness called by the plaintiffs.

I work at the Southern Railway. I am the trace clerk in the Transportation or operating department. I trace the freight cars. I have been employed by the Southern Railway for 15 years. I am not a member of any labor union.

Q. Is it your wish or desire to become a member?

Objection—overruled. Exception #22.

A. No sir, I do not wish to join any organization.

Q. If the evidence in this case should establish or tend to establish that part of the money which you would be required in order to retain your job under the union shop contract would be used by the union for purpose of supporting certain legislation, and certain candidates, and to oppose other legislation and other candidates, what is your position with respect to such use of your money?

Objection—overruled. Exception #23.

A. Well, I object to being forced to pay any dues to any organization, the disbursement of which we are not absolutely sure of.

I have had a personal experience in connection with strikes on the Southern Railway. My job was abolished in 1950 when the operating unions went on strike and naturally the trains stopped running. I did not have any cars to trace and naturally my job was abolished. That threw me out of work. Even though my job was abolished I showed my good will and went back and performed my duties just the same without any pay. I went ahead and worked and received no pay for it until we had an opportunity to bid our jobs in again.

Cross examination.

During the period that I was laid off by the railroad I continued to go back and work without pay for the railroad. The work which I performed when I went back to [fol. 63] work had to do with tracing freight cars. I am a train checker and although I made the statement that there were no freight cars to trace, there was a certain duty to be performed, some of the tracing was curtailed but there was a skeleton force and a skeleton type of work that had to be done. I performed that without pay. I never asked to be paid for that work.

ELIZABETH BROWN, a witness called by the plaintiffs.

I worked for the Southern Railway as clerk stenographer in the Signalmen's Electrical Department. I have worked there for 12 years. I am not a member of any labor union and do not wish to join.

Q. If the evidence in this case should establish or tend to establish that under the contract which is now in effect at Southern Railway, that you would be required under that contract to become a member in order to hold your job, what is your position with respect to that requirement?

Objection—Overruled—Exception #24.

A. I am opposed to it.

By Mr. Blakeney:

Q. Why are you opposed to it, Mam?

Objection—Overruled—Exception #25.

A. I am opposed to being forced to join anything.

By Mr. Blakeney:

Q. If the evidence should establish or tend to establish that the money which you would be required to pay to the union in order to retain your job under this union shop contract, that a part of such money would be used to support certain legislation, or to oppose certain legislation, and support certain candidates and oppose other candidates, what is your position with respect to such use of your money?

[fol. 64] Objection—Overruled—Exception #26.

A. I am opposed to having an organization representing me or anyone that I might be opposed to, and if I had to join and pay my money to them, they would possibly represent me on someone that I might not be in favor of and I object to it, and am opposed to it.

By Mr. Balkeney:

Q. If the evidence in this case should establish or tend to establish that a part of such money would be used to finance a benefit or insurance program whether you participate in it or received benefits from it or not, or even if you were unwilling to receive benefits from it, what is your position with respect to such use of your money?

Objection—Overruled—Exception #27.

A. I would be opposed to it.

If the evidence should establish or tend to establish a part of the money collected by the union is used to oppose and seek to repeal the right to work laws, I am opposed to such use of my money because I am for the right to work laws. If the evidence should establish or tend to establish that part of the money collected by unions would be used to maintain the Federal law which makes possible union shop agreements and that part of the money would be used to maintain that law in effect, I would be opposed to it.

CELESTIA STONE SMITH, a witness called by the plaintiffs.

I live in Charlotte and work at the Southern Railway as a clerk stenographer in the engineering department. I am not a member of any labor organization and do not wish to become a member.

Q. If the evidence in this case should establish that there is a union shop agreement in effect at the Southern Railroad which required that employees become members of that organization in order to keep their jobs, what is your position with respect to such requirement?

[fol. 65] Objection—Overruled—Exception #28

A. I am opposed to it.

By Mr. Blakeney:

Q. If the evidence should establish or tend to establish that a part of the money which you would be required to pay to the union under that contract will be used by the union to support certain legislation, and certain candidates,

and to oppose certain legislation, and other candidates, what is your position with respect to such use of your money?

Objection—Overruled—Exception #29.

A. I am opposed to that, I prefer to support the candidate whom I would like to support and not have an organization, any organization take my money and support a candidate whom I might not wish to support.

Cross examination.

I have had two periods of service with the Southern Railway, the first from July 1, 1943 through August 15th, 1945 at which time I stopped, brought up my family and returned to the Southern Railway January 20, 1955. When I returned I returned as a new employee. I went back on my own volition. I was invited as a new employee because my work had been satisfactory previous to that. Incidentally, during those ten years, two other departments had asked me to help them during illnesses in their departments and I had worked for a few weeks at a time. My present seniority is based on or about January, 1955.

Mary B. Crosby, a witness called by the plaintiffs, recalled.

I have had a personal experience with respect to being affected by negotiations of the clerks' union of the Southern Railway. Prior to 1954 I was in an excepted position which was a monthly rated position and January 1955 I was placed on a daily rate or schedule position. In so doing, I took a cut in pay and my retirement was affected and my insurance [fol. 66] with the company.

Q. That was a result, or was that a result of any negotiations as betwixt the Southern Railway Company and the union?

Objection—Overruled—Exception #30.

A. Yes.

So far as I know I was on that job and scheduled position from then on.

Cross examination:

Until January, 1955, I was in an excepted position. I had been in that excepted position since January 1948. I do not know whether while I worked in the excepted position my employment was subject to the union shop agreement. Even though I got a demotion I still retained my seniority right on through. The railroad was carrying an insurance policy that paid my estate at death one year's salary and that was cancelled when I changed jobs.

Redirect examination:

The change in my position was not my doing. The management advised me. I've been with the Southern Railroad 32 years.

Thereupon the following deposition was read to the jury:

Deposition of G. A. Link.

G. A. Link examined as an adverse witness by the plaintiffs pursuant to order of the Superior Court of Mecklenburg County at the County Court House in Charlotte, North Carolina, on March 4, 1958, testified:

I am an official representative of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees but the organization is generally known as the Brotherhood of Railway Clerks. I am a full time employee of the Brotherhood of Railway Clerks. The Brotherhood represents employees in the kind of job categories indicated by the name, not only on the Southern Railway [fol 67] but on other railroads as well. It represents such employees on practically all the railways of the country.

The employees whom my Brotherhood represents work in all of the railroad offices, on lines and off lines; offices in the storehouses, in the yards, freight stations, passenger stations, call offices, calling bureaus and what have you, wherever clerical employees would normally work. Approximately 6500 employees of the Southern Railway are members of my Brotherhood. Somewhere around 300,000 employees, maybe a little better than that, of the railroads of the country in general are members of the Brotherhood of Railway Clerks.

With respect to the organizational set-up of the Brotherhood the members at the lowest local level are in what we call Lodges. Charlotte, for example, has a separate local lodge in my Brotherhood. The Charlotte Local Lodge would cover the territory around Charlotte. I would say the territory between Spartanburg and Salisbury. The Charlotte Local Lodge is confined to employees of the Southern Railway and does not extend to persons who work for the other railroads in the territory. The next step in our Brotherhood organizational set-up above the local lodge from an organization standpoint is System Board of Adjustment. On each railroad of any appreciable size there is a System Board of Adjustment established. The System Board of Adjustment that is above the Charlotte Local Lodge of Southern Railway Employees has its headquarters at Charlotte. That System Board of Adjustment has as its members all of the members of the Brotherhood employed by railroads under the jurisdiction of that System Board. That System Board does not have any representatives from the Company on it but is composed solely of representatives from our Brotherhood.

This System Board of Adjustment handles the negotiations, maintenance of agreements and handling of claims and complaints and grievances. The members of the System Board are elected by the members in the individual local lodges under the jurisdiction of the System Board. [fol. 68] Under the Charlotte System Board are all the Local Lodges of the Southern Railway System Lines as well as of the Local Lodges on certain subsidiaries of the Southern. That System Board of Adjustment is called the Southern Railway System Board of Adjustment. At the present time on that Board we have a local chairman who is a member of the Board from each lodge and then a division chairman that represents the employees on the Division level for each railroad operating division; we have six vice-chairmen from the various segments of the railroad, as for example, the general offices, stores department and line of road.

Thus the System Board of Adjustment for the Southern Railway has on it a representative from each Local Lodge. Out of these local chairmen are elected a division man from

each division. You may have five or six local lodges on one railroad operating division; out of those representatives on that division will be elected a division chairman.

The representative from the Local Lodge on the Division Board of Adjustment is called a Local Chairman. He is a Local Chairman for one lodge, representing the members of that Lodge in the handling of grievances.

Also on the System Board of Adjustment we have Division Chairmen and Vice-General Chairmen.

The railroad has recently consolidated some of the divisions and I would estimate roughly that at the present time there are 17 or 18 Division Chairmen on this System Board of Adjustment. Roughly I would say there are six Vice-General Chairmen.

The Local Lodge Chairmen are elected by the membership of the Local Lodge which they represent. The Division Chairmen are elected by the Local Chairmen on that division. The Vice-General Chairmen are elected by the Local Chairmen in their jurisdiction. For instance, if it is the General Office it's usually one Lodge; when he is Local Chairman he's automatically Division Chairman and Vice-General Chairman to represent the employees in that par- [fol. 69] ticular office, or in that jurisdiction. On the Line of Road he's elected by the Local Chairmen, in the General Managers District. We have three General Managers and the railroad is divided in three segments, Eastern Line, Central Line, and Western. We elect them that way.

There are roughly 79 Local Lodge Chairmen on that System Board of Adjustment at the present time.

Above the System Board of Adjustment next in the structure of our Brotherhood Organization there is the Grand Lodge, International Organization. The Grand Lodge, International Organization, has a president, Grand President is his title. We have a Grand Secretary Treasurer. And there are 9 Vice Grand Presidents. We have a Board of Trustees composed of five members. That is the make-up of the Grand Lodge. The Trustees are Officers of the Grand Lodge.

The Grand Lodge at the present has, I would say, 15 officers. These are elected to office at the Grand Lodge Convention. The delegates to the Grand Lodge Convention

elect the Grand Lodge Officers. The Grand Lodge Convention is held every 4 years. And to that Convention come delegates from the various Local Lodges. Then at these Conventions they elect the men who are to constitute the officers of the Grand Lodge. There are some small Local Lodges that do not have direct representatives. Their votes are pooled. In other words, you are entitled to one delegate for each 150 members or major fraction thereof. I do not know how many Local Lodges the Brotherhood of Railway Clerks has at the present time. I would say 3500, that would be a rough guess, I do not know exactly.

The Grand President of the Brotherhood of Railway Clerks at the present time is Mr. George M. Harrison.

My own position in the Brotherhood is called General Chairman of the Southern Railway System Board of Adjustment. This System Board of Adjustment which I have just described is the one of which I am chairman.

The Grand Lodge has a constitution and by-laws. Some of the Local Lodges have a separate constitution and by-
[fol. 70] laws. It was not compulsory upon Local Lodges to have a separate constitution or by-laws. Some of them have their own Local Lodge by-laws that are approved by the Grand Lodge.

The System Board of Adjustment has a kind of constitution or by-laws. It is called Southern Railway System Board of Adjustment By-Laws.

The only thing actually called Constitution is the Grand Lodge Constitution, as far as I know. The Grand Lodge has a combination affair, Constitution and By-Laws.

The Grand Lodge puts out a semi-monthly publication known as "The Railway Clerk." Every member is on the mailing list. The Brotherhood also puts out a publication titled "Bulletin" that goes to the officers, from the Local Lodge level on up. It is more or less information about the disposition of grievances and things of that kind. That bulletin is published by the Grand Lodge. Those two are the only publications about which I know which are published either by the Local Lodges, the System Board or the Grand Lodge.

The Bulletin is published monthly.

Typically, a Local Lodge has a President, a Vice-President, Secretary, Treasurer, Inner Guard, Outer Guard, and Chaplain. These officers are elected by the membership of the Local Lodge.

The Local Lodges are required to have at least one meeting a month. These meetings of the Charlotte Local Lodge are held here in Charlotte.

On or about February 27, 1953, the Southern Railway and some 17 or 18 Railway Unions entered into what is called a Union Shop Agreement. I executed that agreement on behalf of the Brotherhood of Railway Clerks as General Chairman and Mr. George M. Harrison executed it as Grand President. That agreement provides that employees on the Southern Railway, in the crafts and occupations which my union covers, shall, within 60 days, become members of the Brotherhood of Railway Clerks and maintain membership in the Brotherhood of Railway Clerks. Our Brotherhood [fol. 71] in the way of compliance requires employees of the Southern Railway to pay an initiation fee and monthly dues beginning after the 60th day of his employment with the carrier. For instance, Anna Mae Allen, the first named of the Plaintiffs in this case, in order to comply with the terms of the union shop agreement would be required to pay an initiation fee unless she had previously been a member of the Brotherhood. If she had previously been a member she would have to pay a reinstatement fee, plus dues at 60 days from the effective date of the agreement. Under the union shop agreement the reinstatement fee is a flat amount, the same for everybody. No matter how long ago a person had been a member or how long since they had been a member, the fee they would have to pay would be the same to each and every other person who had formerly been a member. There was a uniform arrangement worked out whereby when the union shop agreement became effective any number could comply and pay a flat initiation fee of $10.00. That is the initiation fee that we require. The same would apply with respect to reinstatement fee insofar as the union shop is concerned. The reinstatement fee and the initiation fee is $10.00 in any case. Then she would also have to pay dues. Those dues on a particular system or under the jurisdiction of the particular System Board are

uniform and the same for everybody. These would be the same for everybody in the Southern Railway. She would not be required to pay any back dues prior to beginning 60 days from the effective date of the Union Shop Agreement. From 60 days after the effective date of the Union Shop Agreement she would be subject to dues at the regular rate of $2.25 a month.

Q. In other words, commencing 60 days after February 27, 1953—

Objection—Overruled—Exception #31.

A. Yes.

Q. —or April 27, 1953, approximately, her dues would [fol. 72] commence?

Objection—Overruled—Exception #32.

A. That is right.

Q. Even though she had not been a member up to now?

Objection—Overruled—Exception #33.

A. That's right.

Although the agreement has a provision with respect to assessments insofar as our organization is concerned, we do not have any assessment; that is, as far as we are concerned on the Southern Railway System Board of Adjustment. Now it may be that on some other properties, some other set-ups under the Grand Lodge or the National Organization, there is an assessment. I am not familiar with that. All I know about is the Southern Railway. We do not have any assessments. I do not say that there has never been any assessments but there has never been in the last ten or twelve years. Way back some years ago there was an assessment. I don't even remember the amount of it. It was a voluntary assessment at the time. It was not compulsory. So far as Southern Railway System Board of Adjustment is concerned for the last ten or twelve years there has been no payment made to the Union, either to the Local Lodge, to the System Board or to the Grand Lodge or to all of them by members except by the regular monthly dues.

These monthly dues may vary from time to time as the System Board raises dues or lowers dues but until that is done they are uniform throughout the entire System. The System Board has authority to determine the amount of the dues subject to approval by the Grand President. I do not know who the Grand President consults or how many people or anything like that, but we get our approval over the signature of the Grand President. He is authorized to approve such things. The System Board has no power to fix initiation fees even with the approval of the Grand [fol. 73] Lodge or the Grand President. Initiation fees are fixed by the National Organization, at Conventions.

The entire revenues of the Brotherhood of Railway Clerks so far as the Southern Railway is concerned are derived from these $10.00 initiation fees and these $2.25 monthly dues and from no other source so far as my knowledge goes.

What is called a per capita tax is our dues. We have no different names or terms by which the per capita taxes are known except dues. The dues are broken down, are separated into three parts, one part goes to the Grand Lodge, that is the National Organization, one part to the System Board and one part to the Local Lodge. The part that goes to the Grand Lodge is called the Grand Lodge per capita tax. The part that goes to the System Board is called the System Board per capita tax. I have never heard that the part that goes to the Local Lodge is called a per capita tax.

An employee of the Southern Railway, Anna Mae Allen, for example, in order to come into compliance with the Union Shop Agreement would have to pay either an initiation or reinstatement fee of $10.00 and to commence to pay the regular monthly dues of $2.25.

Q. She would have to pay that same $2.25 for the period since April 27, 1953, or thereabouts, up to the time of her initiation?

Objection—Overruled—Exception #34.

A. If she's been regularly employed.

Q. If she has been in the employment of the company during that time?

Objection—Overruled—Exception #35.

A. That's right.

We have a form of application for membership for her to sign and deliver to the union. I do not recall what that application says.

Q. In substance, does it have provisions to this effect, [fol. 74] that the applicant applies for membership in the Brotherhood of Railway Clerks and agrees to abide by the Constitution and By-Laws of the Brotherhood, and pledges allegiance to the policies and principles of the organization?

Objection—Overruled—Exception #36.

A. Well, I won't say it's exactly like that but it's similar to that.

Q. To that effect?

Objection—Overruled—Exception #37.

A. Yes, sir.

When that application is signed and turned in by the employee to the Brotherhood of Railway Clerks some member in good standing has to recommend or approve the application. Then it is brought up in the Local Lodge meeting and acted upon, whether they are accepted or rejected for membership. The Local Lodge does that.

The application for membership is delivered to the prospective employee in different ways. Sometimes the employee comes to some member of the organization or some officer of the Local Lodge or may come to the office of the System Board and ask for an application blank. In other cases, the local Chairman or the Secretary of the Local Lodge may contact the employee and ask him to join and at that time give him an application blank. After the employee signs the application that application is then put back into the hands of some representative of the Brotherhood and brought up at a local Lodge meeting. There is a vote in the Local Lodge meeting as to whether the individual shall or shall not be accepted into membership. After the vote he or she is notified that he or she has been rejected or accepted. As to further proceedings, the practice in Local Lodges varies. Some have mimeographed

forms they send out. Some write individual letters but in every case to my knowledge the new member is advised as to when dues are payable and other things pertaining to [fol. 75] the Local Lodge. Similarly, the person to whom they are paid and how the local dues are paid varies from locality to locality depending on the size of the lodge. If it is a small lodge the Secretary usually does all of it himself or herself, and in a large lodge there are dues collectors assigned to certain offices, certain territories. They go around and collect the dues. In other instances, they are paid by mail. There are various ways to collect the dues. The union shop agreement with the Southern Railway Company contains no checkoff provisions and the Southern Railway Company does not deduct dues from an employee's pay.

If an employee desires to pay her dues to the Brotherhood by check the check is supposed to be made out to the Secretary of the Local Lodge. The Secretary of the Local Lodge is expected to maintain a bank account in which he deposits these monies which he collects. The bank account is carried in the name of the Local Lodge. Then periodically the Local Lodges are required to remit from that account to the System Board for its per capita tax part and to the Grand Lodge for its per capita tax part. The part which remains with the Local Lodge is used either for salaries or what have you, whatever they vote on to spend it for. The major portion of the $2.25 is sent to the System Board and the Grand Lodge. Typical uses to which the Local Lodge might devote its part would be paying Lodge rent, paying rent on a place to meet or paying Local Lodge officers' salaries or expenses whenever they incur expenses, and in case you are having some kind of entertainment and various other things that an organization might be called upon to devote their money to.

The portions that go to the System Board and the Grand Lodge are used primarily to carry on the activity of the various units of the Brotherhood; for instance, the Grand Lodge, to carry on the activities of the Grand Lodge, and the System Board, pay salaries and expenses and the cost of negotiation agreements and printing and mimeographing and stationery and what-have-you, office rent.

[fol. 76] Negotiating collective bargaining agreements does not require all of the money. Whether it required a minor or major part of it would depend on the period of time that you were talking about. If we are in a series of negotiations, it would take a major portion of it. Another six months we may not be in negotiation and it would not take any part of it. It depends upon what period of time you are talking about. There might be a year's time that collective bargaining or negotiations would take the smaller portion of it.

The insurance arrangement that our Brotherhood has is carried on by the Grand Lodge. I do not know all the particulars but we do have in our organization a $300 death benefit for any member. After a year's membership if a member dies his beneficiary gets $300.00 death benefit. That's automatic. This death benefit provides only for a death benefit not for any other kind of benefit. We do not use an outside insurance company to handle the death benefit fund but we handle that ourselves; that is, the National Organization, the Grand Lodge, does. They have a fund set up out of which they pay those benefits. Those benefits are payable only to the dependents or relatives of members who die after a year's membership.

Q. Now, take, for example, the employee who—of the Southern Railway—who has not been a member of your Union since April 27, 1953; that person, up until the time he or she becomes a member, wouldn't have any benefits out of that, would they?

Objection—Overruled—Exception #38.

A. Not until they have been a member a year.

Q. Yes, sir. In other words, even though they would have to go back and pay those back dues you've referred to, they would not have had that insurance coverage in the meantime?

Objection—Overruled—Exception #39.

[fol. 77] A. Not to my knowledge, no, sir.

The Brotherhood of Railway Clerks does not provide any other kind of benefits or insurance arrangements directly out of funds of the Brotherhood.

The Brotherhood of Railway Clerks has certain employees of the Grand Lodge who are assigned to handle the death benefits fund. I do not have any idea how large a staff attends to that. It is all carried on at the Grand Lodge Headquarters which are located at Cincinnati, Ohio. The Grand Lodge owns a building there. I do not know how many representatives and employees the Grand Lodge has in that building. All of the employees of the Grand Lodge so far as I know are on a full time basis. They have no part-time people to my knowledge. I would estimate the employees of the Grand Lodge at 125 all told. I don't know that that's anywhere near accurate, but I'll estimate that. Most of them are located in that building in Cincinnati. The two publications which we have mentioned are not published and printed in that same building. I don't know where they are published, somewhere there in the vicinity of Cincinnati, either in or around Cincinnati, I don't know where. In addition to the officers of the Grand Lodge having their offices in that main building and the death benefit fund being handled there that is all the activities that I know of that are carried on and, other than the routine work a National Organization would have in its Grand Lodge, such as carrying on of correspondence and furnishing the members and the officers with information, things of that kind. It is like any other organization, the head of it, all this information starts there, that's the activities. The men who write the news articles and editorials for the publications have their offices there.

The System Board of Adjustment for the Southern Railway has an office at 804 Independence Building, Charlotte, North Carolina, which is my headquarters. The Southern Railway System Board of Adjustment has a number of employees in addition to myself, all full time. [fol. 78] There are four of us all together. Our duties are primarily that of handling claims, grievances, and disputes that can not be settled on the Local and Division level between our local Division people with the local officers and the Division officers of the Carrier. If it has to be appealed beyond those officers, it comes to my office. The System Board of Adjustment is occupied primarily in

attending to complaints, grievances and the like. The major portion of the time of the Grand Lodge is also devoted to that, but there are other things, incidental activities.

The Local Lodge keeps bookkeeping records of the money it takes in and the money it puts out. These records are in the hands of the Secretary Treasurer. The System Board correspondingly keeps such records and the Grand Lodge also keeps such records. These records show the detailed moneys received and money spent and the purposes for which it has been spent. Such records of the System Board are in my office here in Charlotte. Such records of the Grand Lodge are kept in the main office building in Cincinnati.

The funds of the Grand Lodge are primarily invested in government bonds—U.S. and Canadian bonds and none are invested in real estate, except the property that is owned where the headquarters are. The building and property on which the building stands is all I know anything about which is invested in real estate.

The financial affairs of a Local Lodge are audited periodically and a copy of the report is sent into the Grand Lodge. The Grand Lodge have auditors who go around and spot check the Local Lodges to see that they are functioning properly in accordance with the Brotherhood laws. The audits of the Local Lodges are read out at the meetings. They are reported to the meeting but they are not published or presented to the members unless they are at the meeting. The audits or record of the financial affairs of the Grand Lodge is published in the official organization, "The Railway Clerk." I am not sure whether it is annually or semi-annually; at least once a year, and I [fol. 79] believe it is twice. That's when the books are audited. The affairs of the Grand Lodge are audited by a firm of certified public accountants twice a year. As to whether any more detailed information than is put in the Railway Clerk is available to individual members, I do not know what more detailed information they would want. I assume they would make it available to them. I do not know, I never have heard of it being requested, other than what certified public accountants put out.

An audit of the same sort is made of the System Board. That is sent to each Local Lodge Secretary and it is made available to the Local Chairman in attendance at the System Board meeting which is held annually.

I am not familiar with whether the Brotherhood does participate in political and legislative meetings. All my time is devoted to the handling of claims and grievances and negotiating agreements. The Grand Lodge is in charge of such things. Some of the employees in the Grand Lodge are delegated to handle legislative matters. How many or to what extent I am not familiar. That is the Grand Lodge function and I devote all of my time to the System Board. The Grand Lodge does have one man who devotes his time to keeping in contact with matters going on in Congress when Congress is in session. He's our representative in Washington handling matters of that kind. He is National Legislative Representative but I think his title, as far as the organization is concerned is General Representative but he is a National Representative, National Legislative Representative, in fact. I don't know whether there is anybody else full time in the work in the national field. That's the only one that does that work exclusively. Some of the other employees of the Grand Lodge, whether there is one or ten, or what I don't know do some work in connection with the legislative meetings. They are regular, full time employees of the Brotherhood. On the state level the Brotherhood likewise has representatives in contact with the legislature of the various states when they are in session. As far as I know, that is [fol. 80] true in each state. That doesn't come under the jurisdiction of the System Board. It is more or less hearsay with me, I have no jurisdiction over that. As to whether here in Charlotte there is any member of the Brotherhood who attends the legislature in Raleigh, there was somebody years ago, to my knowledge, there hasn't been in a number of years. I'd say this particular fellow died about 6 years ago and they haven't had anyone here in Charlotte doing that kind of work since then. His name was O. D. Steinbeck. I think our Brotherhood has someone from around Salisbury who stays up at Raleigh when the Legislature is in session. I don't know that the Brother-

hood has anybody from anywhere else in the State who stays up at Raleigh when the Legislature is in session. When this man from Raleigh is up at the Legislature in Raleigh his salary is paid by the Brotherhood. Just what his duties are I do not know. I just know that when the Legislature is in session we usually have a representative there from the State. I would think his job is to contact the Legislature and indicate the Brotherhood's interest in this or that legislation. I would think that he was to persuade the passage of this or that legislation.

Each Lodge can if they desire, elect or appoint a Legislative Representative. To what extent he functions I am not in a position to advise you. From time to time there is a legislative tax in the Brotherhood. It comes out of the Local Lodge. What proportion of the tax, the amount of it, the details or particulars I'm not in position to say, I don't know. This legislative tax money is used to pay the salary of the man who goes to Raleigh and stays down there while the Legislature is in session. As far as I know, the members are required to pay this legislative tax out of the Local Lodge. I have never heard of any opposition to it. The amount of that tax is fixed by the committees in the meetings in the particular state in which they operate, in which they function. There's a uniform tax in each state that comes out of the portion of dues paid by the individual member to the Local Lodge. It is a uniform tax in each state. The part of the portion of the [fol. 81] $2.25 that the Local Lodge retains is used for that purpose. A portion of the $2.25 which is retained by the Local Lodge is uniformly and regularly taken out and used to defray expenses and salary of men who go up to the Legislature and the like, such as the Legislative Representative. I do not know what percentage or what proportion of the Local Lodge portion goes to such Legislative Representatives. To some extent the Grand Lodge has from time to time issued written statements as to the policies of the Brotherhood in respect to political and legislative matters. There has been a circular letter put out from time to time as to legislation which the organization favors, such as amendments to the Railway Labor Act or the Railroad Retirement, unemployment and sick-

ness benefits, features of the Act, things of that kind are put out by circular letters to the Local Lodge. I think I have seen such an issue put out under Mr. Harrison's signature called "Legislative Facts" but I'm not familiar with it.

Our Brotherhood exerted itself, along with the other Railway Brotherhoods, to get the 1951 amendment to the Railway Labor Act passed. I don't recall any statements from the Grand Lodge with respect to the duties of the Chairman of the State Legislative Committees to issue legislative reports at the end of the State Legislative sessions. I did not know that the Legislative Representatives are required to do that. I don't recall any statement from the Grand Lodge to the effect that in 1947 the Grand Lodge sent copies of three drafted bills to Chairman of the State Legislative Committees for introduction into the State Legislature. I have heard of bills relating to prohibiting employers from charging employees or prospective employees a charge or a fee for medical examination and bills to facilitate check or draft cashing and bills for general health and sanitation. I can recall that in two states where our people reside the medical fee Bill has been enacted. I have been told there has been an active State Legislative Committee in each state. Now the details [fol. 82] and all that I am not familiar with. I do not recall a statement by the Grand Lodge that the State Legislative Committee handles our legislative needs affecting members of the Brotherhood before sessions of the State Legislature, endorses candidates for state offices and protects and serves the Brotherhood on issues coming before state agencies, boards and commissions. I do know that they represent the Brotherhood in legislative matters at the State Capital. I don't recall the statement from the Grand Lodge that:

"The Chairman of the State Legislative Committee, where finances permit and circumstances warrant, spends full time in the State Capital when the Legislature is in session. He attends hearings on bills and testifies in behalf of our Brotherhood. In some cases he may sponsor legislation for introduction in the Legislature. He also

opposes adverse labor legislation. When the State Legislative Committee endorses state candidates for state offices, he does everything possible to see that they are elected. He notifies members periodically of his activities and urges them to act on legislative matters. He informs himself and members of action taken by the state agencies and regulatory bodies and appears before them in the interest of the Brotherhood. When the State Legislature adjourns the Chairman makes a report to all the Lodges under the jurisdiction of the Committees, the Legislative Representatives and the Grand President. He is required to include in this report the voting record of all the members of the Legislature."

I don't recall the statement but I assume it's substantially correct. The Legislative Representative or Legislative Committee of the Brotherhood in the various State Legislatures are charged with responsibilities to use their influence and do what they can to get legislation enacted that is favorable to the employees represented by the Brotherhood, and, of course, to oppose legislation that is not favorable. That's their primary function, as I understand it. As to whether they seek to get people elected to [fol. 83] office who will vote for measures which the Brotherhood deems desirable and who will vote against measures which the Brotherhood deems undesirable, that may be true but I'm not in position to say definitely that they do that. I do not recall a statement from our Grand Lodge that:

"In all political matters, the policy of voting for proven friends and of defeating proven enemies, regardless of political affiliation, should prevail." It sounds reasonable that you wouldn't support a fellow that was adverse to your thinking and desire. I would think the Brotherhood, through these employees and agents whom it maintains would seek to carry out that policy and get those elected who will favor what it deems to be right and desirable, but I did not know to what extent they go in doing that. I don't recall a statement from the Grand Lodge of the Brotherhood that:

"The Legislative Representative is the officer through whom the Lodge members make known their wishes to the

men who make our laws and run the governments of the Nation, State and local communities. As a member of the State Legislative Committee he helps to shape the legislative policy of the State. As Lodge Officer he is the leader in legislative and political affairs, responsible for carrying out the policies of the Grand Lodge."

I presume it is a correct statement of fact and policy insofar as I know if it was put out by the Grand Lodge.

Q. Do you recall this statement that "The Legislative—"

Objection on the ground that counsel is reading long statements purportedly from some unidentified printed pages and asking the witness whether he recalls the statement being made and the witness saying he doesn't recall but he's not in position to question whether counsel is reading accurately and he is not in position to question that what counsel is saying is so.

Objection—Overruled—Exception #40.

[fol. 84] Further objection on the ground that counsel appears to be reading from a document having on the cover in prominent numbers the date 1951, two years before there was a Union Shop Agreement on the Southern Railway. And that activities of the Brotherhood prior to there being a Union Shop Agreement cannot be of legitimate inquiry in this proceeding.

Exception—Overruled—Exception #41.

Q. Do you recall a statement in one of the supplements of the Grand Lodge Bulletin that:

"The Legislative Representative is a man of action, that he joins with other local legislative representatives where feasible in making endorsements of candidates for local offices and in investigating the qualifications of other candidates for office as requested by the State Legislative Committee Chairman."

Objection—Overruled—Exception #42.

A. I do not. My duties are handling grievances and negotiating agreements. I have no responsibilities what-

soever with reference to the legislative features to which counsel was referring. From my limited knowledge I am not in a position to refute what counsel has read from the document. I assume it is correct if counsel was reading from the office documents of the Brotherhood. Legislative representatives of the Brotherhood are charged with representing the Brotherhood in matters of legislation favorable to the organization and the people it represents. With reference to a document which says on the front "Published as a Supplement to the June 1951 Bulletin" I never noticed that it was a supplement and I did not consider it as a supplement. I've seen those documents from time to time but it doesn't come under my jurisdiction and I do not pay too much attention to what is said in them because it is the legislative branch of the Brotherhood.

I don't recall that the Brotherhood had its representatives working on political matters to support the candidacy [fol. 85] of Mr. Stevenson and against the candidacy of Mr. Eisenhower in the last presidential election. I don't know that the Brotherhood had its representatives and employees in the political field to support the candidacy here in North Carolina of Mr. Kerr Scott for Senator. I don't know that the Brotherhood had its employees and representatives here in North Carolina to support the candidacy of Mr. Sedbury and oppose the candidacy of Mr. Jonas for Congress. That is a legislative matter and I am not acquainted with it. I never learned that those were the positions of the Brotherhood. I know nothing about the Brotherhood causing any monies to be paid out in behalf of the candidates mentioned.

The last general convention of the Brotherhood was in 1955. I was present throughout the convention. Some such resolution was adopted as counsel read as follows:

"Whereas, our 1951 San Francisco convention, by the adoption of Resolution No. 257, established the following policy: Resolved that we go on record as endorsing wholeheartedly the principle of the Union Shop and call upon all Grand Lodge officers, our Boards of Adjustment, and all other effective subordinates interested in the Brotherhood, to fully co-operate and assist in the vigorous prose-

cution of our requests for the adoption of Union Shop and check-off agreements on each and every carrier within the United States with which we have contracts and be it further resolved that the Grand President be and hereby is authorized to take such disciplinary action as he may deem necessary and appropriate towards any member of the Brotherhood who has interfered or may interfere with our program for the adoption of the Union Shop and check-off, or who attempts to break down or undermine the principles thereof; and, whereas, Union Shop agreements have been adopted by most of the railroads and other companies with which we hold collective bargaining agreements; and, whereas certain carriers and other companies have refused and continued to refuse to enter into Union Shop Agreements; therefore be it resolved that [fol. 86] we re-affirm the policy established in Resolution No. 257, adopted by the 1951 convention, and continue our efforts until we have secured Union Shop Agreements with every carrier and company with which our Brotherhood holds collective bargaining Agreements."

I'm not in a position to say whether the words which counsel read constitute a correct reading of the Resolution. I am not in a position to agree that what counsel read was 100% as it was adopted. I do recall that such a Resolution was adopted to do everything within reason to get Union Shop Agreements on every property with whom we hold collective bargaining agreements.

Cross examination.

I am not a representative of the Brotherhood for any purpose other than presenting and negotiating concerning grievances and negotiating collective bargaining agreements. Those are the only respects in which I am a representative of the Brotherhood on the Southern Railway System. Those are the only functions I perform for the Brotherhood.

The Local Lodge in Charlotte contains members only of the Southern Railway. As to whether there was an assessment in 1949 of $5.00 by the Grand Lodge to cover the expenses of the 40 hour week, there was an assess-

ment about that time but I'm not certain as to what year. That was voluntary in the beginning, but was later made compulsory. If an employee comes to me and says to me or to any officer of the Brotherhood that he refuses to sign an application for membership, if he is willing to pay the initiation or reinstatement fee or dues we will treat him as being in compliance with the Union Shop Agreement although he won't be a member of the Brotherhood. He has complied with the provision of the Union Shop Agreement when he pays the fee and dues.

With respect to the death benefit paid by our Brotherhood my statement that each member who dies after one year's membership has a $300.00 death benefit is limited to employees who are under 60 years of age when they join [fol. 87] the Brotherhood. If they are beyond 60 years of age when they join, they do not get the $300.00 death benefit. It is paid in instances of members who are in good standing at the time of his death and have been a member continuously for 12 months regardless of past delinquencies. If they are reinstated they are reinstated as a new member and they have got to wait for 12 months. If they are just delinquent and paid up their dues, they are in good standing, and the $300.00 would be paid even though they would be delinquent during the last year of their life.

With respect to those long statements that counsel quoted I don't know whether any of those statements actually appear in any publication. My previous testimony that I assumed the statement read by counsel was correct was predicated simply upon my supposition that counsel was reading correctly something which appeared in a publication of the Brotherhood. I do not know it was so. I do not know whether the Legislative Representatives support candidates in every case or to what extent. I have heard certain ones say, "I think we ought to support John Smith or Tom Jones," but I don't know to what extent they have gone to do it because the majority of my time is taken up in handling grievances and negotiating agreements primarily. When counsel read from documents it is my observation the documents he had in front of him had the year 1951 on the cover.

Redirect examination.

If an employee of the Southern not in our Union came to the Brotherhood and tendered his initiation fees and current dues and any back dues but wasn't willing to sign an application for membership in the Brotherhood he would be in compliance with the Union Shop Agreement but he wouldn't be a member of the Brotherhood. I do not understand that the Brotherhood doesn't allow me to take money if an employee won't sign the application for membership. Any refusal of the Brotherhood to take money unless the [fol. 88] employee would sign the application for membership doesn't apply on the Southern Railway. We have a separate sheet to that effect in connection with some of our Union Shop Agreements, applying to properties controlled by the Southern Railway—somewhat similar to the Coast Line Provisions. We have a separate sheet agreement with respect to some properties controlled by the Southern but it isn't in the agreement with the Southern itself.

I presume that what would be compliance with the Union Shop Agreements would be a question of law. He is not a member of the Brotherhood until he signs the standard application form and is accepted and recorded by the Local Lodge. The only way he can get voted on and taken into membership is by signing the application form.

Mr. Craighill: I would like to have the record show that Mr. Blakeney said that the requirement of people joining the Union is not one of the issues involved in this Case. Under the circumstances, I may not be quoting him correctly, my understanding is that he represented to the Court during the examination of the Jury that that was not, that the fact that the contract required people to join the Union was not an issue in this case.

Mr. Blakeney: Mr. Craighill keeps raising that point, and I would like to address myself to him. In the first place, the testimony of those who were asked whether or not they opposed people being forced to join the union, I did not ask that, he did, and I objected, and Your Honor ruled in his favor and allowed that question to be asked, so I don't see where he has any kick coming on that.

Mr. Craighill: I would like to state right there, Your Honor also ruled, as I understand, that the fact, by reason of the fact that Mr. Blakeney had taken the position that that was not an issue in this case, Your Honor then ruled that the fact that the juror had that opinion would not be grounds for disqualifying the juror.

[fol. 89] Mr. Blakeney: But here is what I was trying to state to the Court, and what I have been trying to state to the Court all along, namely what we all know, that the United States Supreme Court has ruled on this matter to some extent. Now my understanding of the extent to which the ruling is, I will not repeat it again, but my understanding is that they simply ruled that some money could be required for certain purposes, the Supreme Court, I do not understand, ruled that anybody could be made to be a member of the union. The Supreme Court did not rule that money could be taken and used for any kind of purposes, that is my understanding of what they ruled, and I don't think I said that they ruled any different from that anywhere along the line. May I add one sentence, we are not insisting upon the amount of dues being shown here, we think as Mr. Kramer says, that the actual amount of money one way or another is not the issue, the issue, one of the principal issues is any part of our money being used for wrongful purposes.

The Court: The Court has ruled on the only objection before it. (Whereupon, during the reading of the Adverse Examination, counsel for Plaintiff asked permission to take testimony of a witness in Court.)

HAROLD B. HACKNEY, a witness called by the plaintiffs:

I work for the Southern Railway as a clerk in the Transportation Department. I am not a member of any labor union. I was at one time a member of the Brotherhood of Railway Clerks. It is not now my desire to be a member of that union.

Q. What is your position with respect to being required to be a member of that union in order to retain your job at the Southern Railway?

Objection—Overruled—Exception #43.

A. I am absolutely against it, being forced to join it to [fol. 90] retain my job because I feel that I should be protected under the state right to work law which says a man can be allowed to make a living for himself and his family without being obstructed by anybody.

Q. Now, Mr. Hackney, if the evidence in this case should establish, or tend to establish that the monies which would be required to be paid by an employee of the Southern Railway in a position such as yours under the union shop agreement, monies required to be paid to the union under that agreement would be used in part to support legislation or candidates, certain legislation and certain candidates, and to oppose other legislation and other candidates, what is your position with respect to such use of your money?

Objection—Overruled—Exception #44.

A. I would be absolutely against that because I think I have sense enough to choose the candidate I would like to support myself, and then on the other hand, I think a man has a right to choose what legislation he believes in and wants to support and any candidate he believes in and wants to support.

By Mr. Blakeney:

Q. If the evidence should establish, or tend to establish that part of such money would be used by the union to finance an insurance or death benefit program, and if you should not desire to participate therein, but that your money required would be used to support it nevertheless, what is your position with respect to such use?

Objection—Overruled—Exception #45.

A. I am against that also.

When I first went to work for the Southern in 1941, I was a crew caller, what they call a call boy—summons employees for the job. In August, 1942, I was promoted to a clerk and that was when I joined the clerks' organization. [fol. 91] At that time we had two different set-ups. One group worked 5½ days a week and the group I was in was on a seven days a week job. I was planning to build a home

and had started that and they came along and negotiated a 40-hour week contract which in effect cut my salary between $55 and $60 a week because at the time we were working 7 days and we were getting time and a half for Sunday and holidays, whereas when forty hour week went into effect, we only now get double time and half for legal holidays, and it cut my salary, and the cut in salary at that time that I took more than made the house payment that I was building and which I completed at the time I got the cut in salary and that is the reason I dropped out in protest to the fact that I did not think I had been fairly represented inasmuch as the five and a half days workers were a majority, they were the ones that were represented in the negotiations, and then men that worked seven days had to take what they got for five and a half days.

Cross examination.

The last card I have for membership in the Brotherhood of Railway Clerks goes through September 1947. That is the last card I have in my possession. I do not know when the 40-hour week became effective on the Southern Railway, possibly it was not until 1949 that such an agreement was made. Although the 1947 card was the last one I have in my possession it may have been later than 1947 that I left the union. I do not know when the Brotherhood of Railway Clerks first made a proposal to the Southern for getting a 40-hour week. Possibly it was sometime in 1948 that a proposal was first made. As far as I know at the present time I ceased being a member before that. It is possible that some of the workers in the textile mills had a 40-hour week before the Southern Railway did. I could not say. I am sure that some industries did have a 40-hour week before the railroad industries. Before I went to work for the railroad I had the opportunity of going to work for five and a half days or seven days and I chose the seven [fol. 92] days because I wanted to work seven days. When the 40-hour week was established it provided that all people should work five days with some exceptions. They said that for the five days employees would be paid six days' pay but that did not happen to any of the clerks because we had

worked seven days. I do not know when we went on the 40 hours week whether we got paid for six days because I had been getting seven days pay a week. I do not know whether I got seven cents over my old pay. I would not say that I did. There was something to the effect that we got an increase of an additional seven cents an hour. I do not know whether there were clerks on furlough in 1949 or not. I do not know whether the clerks on furlough were recalled to work when the forty hour week was established. I know we maintained an extra board made up of people who were subject to call when they were needed, when the regular clerks were not on. Before the 40 hour week went into effect the majority of clerks were working six days or 5½ days. I do not know what percentage of clerks were working 5½ days or 6 days. I do not say that it was extremely few people who were working 7 days like myself. They said that those who had been working 6 days got 6 days' pay for working 5 days after 1949. I do not know that I got 6 days' pay. If I'm not mistaken at that time it was $14.87 for an eight hour day. When the 40 hour week was put into effect the increase brought it up to $15.00 and a fraction over that. I do not know whether that increase was to take care of the 6th day.

Redirect examination.

I do know that I wound up making less money after the agreement was negotiated than I had been making before.

Recross examination.

It is possible that upon the institution of the 40-hour week everybody got an increase of 20 per cent in their wage rates. It is possible that they got an additional seven cents [fol. 93] an hour on top of that. I would not say.

Whereupon, counsel for plaintiffs read the adverse examination of the following in the order named: W. C. Hopper, L. J. Smith, M. C. Long, S. H. Long, Fred A. Burroughs, George M. Harrison and Jessie Clark.

[fol. 125] DEPOSITION OF GEORGE M. HARRISON

GEORGE M. HARRISON, examined as an adverse witness by the plaintiffs pursuant to an order of the Superior Court of Mecklenburg County at the offices of Shoene and Kramer, 1625 K Street, N. W., Washington, D. C., on April 16, 1958, testified:

I am connected with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. That Union is generally known as the Brotherhood of Railway Clerks. My official title is Grand President. I've held that position since July of 1928. The Brotherhood of Railway Clerks is operated by its Grand Lodge and then we have subordinate bodies known as local lodges and another group of subordinate bodies known as System Boards of Adjustment. As Grand President of the Union I also have the title of President of the Grand Lodge of the Brotherhood. The Constitution provides that during the recesses of the Convention, the period between Grand Lodge Conventions, the Brotherhood shall be governed by the Grand Executive Council of eleven Grand Officers, that is the nine Vice Presidents, a Grand Secretary Treasurer and the Grand President. That constitutes and comprises the Grand Executive Council membership.

Plaintiffs' Exhibit #1 appears to be a copy of the Union Shop Agreement made between the several labor organizations in the Southern Railway and its affiliated lodges. I authorized my signature to be attached to the agreement. I did not personally sign it.

Plaintiffs' Exhibit #2 for identification is a printed copy of the currently effective constitution of the Grand Lodge Statutes for the Government of Lodges and Protective Laws for the Brotherhood of Railway Clerks. At the present time the Brotherhood of Railway Clerks has in excess of 300,000 members in the United States and Canada. Any [fol. 126] person becoming a member of the Brotherhood is generally required to pay an initiation fee and thereafter periodic dues which minimum initiation fee at the present time is $7.50 but it varies on individual railroads since our constitution gives authority to vary the minimum initiation fee of $7.50. I couldn't say what the range is,

up to approximately what, because we have so many of those situations. I would just be guessing. The minimum initiation fee prescribed by the Constitution is $7.50. The minimum dues prescribed by the Constitution for the members of the Brotherhood actually employed is $2.00 per month but there again the dues vary above it with the individual railroads since the Committee on each railroad is empowered to fix dues at or above the minimum applicable to all members of the Brotherhood employed on a particular railroad. The System Board of Adjustment has that authority. I think that the dues currently in effect on the Southern Railway are $2.25 a month. I really don't know what the initiation fee on the Southern Railway is, whether it is $7.50 or above, but I couldn't give you the exact figure because I really don't know.

The portion of the initiation fee paid to the Grand Lodge was generally remitted immediately following the entrance of the employee into membership. There is no stated time for the remittance to follow but the custom is that it comes in within a short time after the individual enters membership in the Brotherhood. The per capita taxes are remitted to the Grand Lodge during the calendar month following the close of each calendar quarter; that is, taxes are payable by calendar quarters. The first calendar quarter would be January, February and March. The tax would be remitted to the Grand Lodge some time during the month of April and must be remitted before the close of that calendar month. The same general application follows for succeeding calendar months. The per capita tax would be the proportion of dues going to the Grand Lodge. [fol. 127] That is, one and the same thing.

As to the initiation fee the part of the money that goes to the Grand Lodge is not called a per capita tax. It is known as the Grand Lodge share of the initiation fee. The Local Union derives its funds from dues paid to the Local Union by members. The share or portion of the periodic dues which is sent to the Grand Lodge and called a per capita tax would be a share of the revenues obtained by the Local Union from the dues paid by the individual members but the per capita tax is not an assessment against the individual members. It is against the Local Union.

The Local Union must pay a per capita tax to the Grand Lodge and we hold the Local Union responsible for that payment. Periodic dues are generally the only source of revenue of the Local Union. With regard to assessments to my recollection we've probably had one or two over a period of thirty years I've been President. Some of our Local Unions have assessments for local union purposes but there again it is a small number in relation to the entire number of Local Unions. When the Grand Lodge does have assessments they are against the Local Lodge and sometimes by action of the Local Lodge they collect it directly from the individual members. To my recollection I don't believe there has been but maybe two assessments in thirty years. Of the $7.50 initiation fee the Grand Lodge gets $5.00. The Grand Lodge gets $5.00 out of the initiation fee regardless of the amount of the initiation fee; the Local Lodge would get $1.50 out of a $7.50 minimum initiation fee and the System Board would get $1.00 out of the initiation fees. If the initiation fee was in excess of $7.50 the Local Lodge would get the difference between the $5.00 paid the Grand Lodge, the $1.00 paid the System Board and the initiation fee charged.

The Local Lodge is required to pay the Grand Lodge a per capita tax of $1.00 per month for every member em- [fol. 128] ployed. That is uniform on every Local Union affiliated or subordinate to the Grand Lodge. We divided the initiation fee, Grand Lodge portion and the per capita tax and make allocations to the several funds of the Grand Lodge. From the $5.00 initiation fee we allocate $3.00 at the Grand Lodge to the General Fund Account. We allocate 50¢ at the Grand Lodge to the Protective Fund Account. We allocate 15¢ at the Grand Lodge to the Convention Fund Account. We allocate 90¢ to the Death Benefit Fund. We allocate 30¢ at the Grand Lodge to the Official Publication Account. We allocate 15¢ at the Grand Lodge to the Organization Fund Accoun The Grand Lodge gets $3.00 per capita per member pe arter. Of that, $1.00 goes to the General Fund Account, 45¢ to the Protective Fund Account, 20¢ to the Convention Fund Account, 90¢ to the Death Benefit Fund, 30¢ to the Official Publication Fund Account and 15¢ to the Organization Fund Account.

All remittances to the Grand Lodge are deposited in the first instance to the credit of the Grand Lodge Account. At the end of the calendar quarter, when all remittances are received for the quarter, we then make an allocation on our books to the other Fund Accounts. What is left after the other allocations to the various funds constitute a general fund account which is the general operating revenue account from which general operating expenses are paid.

The Protective Fund Account is used to pay expenses incurred in connection with making and maintaining collective labor agreements of various categories. The Convention Fund Account is used to pay the per diem and travel mileage allowances to the delegates that attend our quadrennial conventions and the incidental expenses such as printing, et cetera, incurred in connection with the conduct of the convention.

The Death Benefit Fund is used to pay the cost of op- [fol. 129] erating the Death Benefit System. The overwhelming disbursements from the Death Benefit Fund represent the payment of the Death Benefits to the beneficiaries of our deceased members who are members of the Death Benefit Department. In order to be eligible to receive a death benefit the person must be a member of the union and that person must fill out an application supplying the essential information to the Death Benefit Department in order to permit a record to be made of his participation in the Benefit System and the beneficiaries to whom he wishes the benefits paid upon his death. The member pays nothing into the Death Benefit System. The Death Benefit Funds are allocated out of the per capita taxes paid the Grand Lodge by the Local Union. We give, however, every member of the Brotherhood the right and privilege to apply for participation in the Death Benefit Fund. It is solely voluntary and up to the individual whether he wishes to participate. He pays nothing in the first instance for the Death Benefit. That is funds that we allocate out of the per capita tax paid us by the Local Union.

No individual notifies the Grand Lodge that he does not desire to participate in the Death Benefit. It is rather in the affirmative procedure that he acts. If he wishes, he fills

out an application to participate. Every member is required under the Union Shop Agreement to pay uniform dues to the Local Union. It has no relationship whatever to any of the benefits which the Union may give as other considerations. The Local Union pays the Grand Lodge a per capita tax which is assessed against the Local Union by the Grand Lodge and the Grand Lodge, out of its revenues, then allocates a portion of the per capita tax receipts to the Death Benefit Fund. That is the legal situation.

If a member makes it known to any and all proper officials of the Union whether Local or otherwise, that he does not desire the Death Benefit he would still be required to [fol. 130] pay the full dues. The dues would not be diminished in any respect because he would not desire to participate in the Death Department.

With respect to the Official Publication Fund we publish and distribute to every person on our rolls as a member, semi-monthly, a copy of the official publication of the union known as the Railway Clerk and "The Railway Clerk" fund is used to pay the cost of expenses of publishing that official journal. Those costs would include postage, printing, photographs, art work, salaries of the people that are engaged in preparing the material for publication and perhaps other expenses caused by the publication of "The Clerk."

The Organization Fund is generally used to pay the salaries and traveling expenses and cost of literature of the staff of general organizations used to recruit members for the Brotherhood.

With respect to recruiting members for the Brotherhood, the situation in that respect is this, that we still have a number of railroads on which there are no Union Shop Agreements. We still have a number of other companies where we do not have Union Shop Agreements, where we try to recruit members and those funds, as you would see, are rather limited and the staff is rather limited and they are presently used to recruit members of the railroad and other employees of other employers where Union Shop Agreements do not prevail. Now these organizers do a lot of other service work for the Local Unions. They assist the Local Grievances Committee, at their request, in han-

dling grievances; they go into Local Union meetings to try to adjust local controversies, by-laws and other internal affairs. They audit accounts to keep the Union honest; such work as that. Even on railroads where we have Union Shop Agreements there have been instances where large numbers have failed to pay their dues and we have sent organizers in to help the Local Union officials interview mem- [fol. 131] bers who were delinquent to get them to pay up their dues. As to the number of railroads on which the Brotherhood of Railway Clerks has not yet signed a Union Shop Agreement, I would say it is somewhere around 25 railroads of various sizes where we would have a legal right to negotiate a Union Shop Agreement. As to the number of railroads which already have the Union Shop Agreement my memory is not too clear about it but I would say approximately 350; that is, carriers subject to the Railway Labor Act distinguished from the railroad. It was to carriers I was referring in respect to the 25 that do not have Union Shop Agreements. I think that all of the so-called largest carriers have signed the Union Shop Agreement with just one or two exceptions.

All of the salaries of the Grand Lodge officers, all of the staff people at headquarters and in our subordinate offices of our Grand Lodge offices are paid out of the General Fund; the rent for the quarters we occupy as a Grand Lodge and the subordinate offices we rent to some of our Vice-Presidents, the postage, the printing, the telephone, the telegraph, general business expense of running a Union.

My salary is $60,000.00 per year which I draw from the Union.

With respect to the Publication Fund it goes to pay for and finance the publication of a periodical called, The Railway Clerk. None of that fund goes for other publication, so far as I know. The editor may buy some magazines just like you would as a lawyer buy some legal publications and that expense would be charged against "The Railway Clerk" fund, but otherwise no publication that we distribute. The Brotherhood of Railway Clerks also publish another publication called "The Grand President's Bulletin" and that expense is paid from the General Fund.

The Railway Clerks comes out semi-monthly. The Bul-
[fol. 132] letin generally comes out monthly, not as of any specified date, but we try to get out at least 12 in a year.

The Brotherhood of Railway Clerks is one of the owners of the publishing society that issues the paper called "Labor." I am not one of the editors of the paper. Presently I am not on any governing board or body of the organization that publishes the paper. I was a member of the Board of Directors for the past two calendar years, 1956 and 1957. Labor is published in Washington, D. C. The paper is financed by subscriptions paid by individuals in segments and entire organizations. In recent years our union has not made any direct payment for the support and financing of the paper "Labor" other than a subscription to the paper. There was a predecessor organization and during the time of the embryo era of the newspaper "Labor" contributions were made by various Railroad Labor Unions, including our own Brotherhood, to the Committee that was developing the possibility of establishing the paper.

At the present time it has no other revenue other than subscriptions and investments. It does not accept any paid advertising. It lives entirely off subscription revenue and return on investments.

We do not subscribe to "Labor" for our members. Some of our subordinate units, namely, the local lodge and System Board of Adjustment subscribe for their members. In such instances we contribute out of the Grand Lodge funds 20¢ for each such subscriber towards the payment of the subscription fee. I can't tell you the exact mechanics with reference to the money that such local lodge or System Board pay towards such subscriptions because that is not in my department but I will give you my best information about it. I do not want to be held to it, but my recollection of the matter is that we are notified by the local lodge and
[fol. 133] the System Board as and when they subscribe and the number of members for which they subscribe and we then send down our Grand Lodge check to the newspaper "Labor" for our subsidy of 20¢ per subscription. At the present time I do not know how many subscribers there are in the Brotherhood of Railway Clerks for "Labor." I don't really know because I do not keep those records in my

office. It would be very small proportion of our total membership. I do not know that some issues of "Labor" are sent to the entire membership whether subscribing or not. There may be. I don't know. I would have no control over that. I do not recall any instance while I was connected as a director of "Labor" and I do not recall from any other actual knowledge of the operation of that paper whether there may have been issues of the paper that were distributed to Labor Union members generally without reference to subscribings. There may have been isolated instances to certain groups of members but generaliy the answer is no. At the present time I think approximately 600,000 copies of the paper are published.

I think that it is true that the subscriptions to it are mainly in the Railway Labor Union field. The ownership of the Company that publishes the paper is in the broad general term, "Railway Union."

I see nothing in Plaintiffs' Exhibit #3 for identification that would identify it as being an excerpt from the newspaper, "Labor." However, it appears that it may be from the newspaper, "Labor" because there is some reference in the body of some of the printed material about Labor. I have tried to look at the back of the Plaintiffs' Exhibit #3 for identification but I don't see anything and the balance of it is glued. When I look through the back I do see the letters, L-A-B-O-R. Looking through the paper on which the excerpt is attached in the instance of Plaintiffs' Exhibit #4 I can read the letters, L-A-B-O-R.

[fol. 134] With respect to Plaintiffs' Exhibit #5 for identification looking through the paper to which it is fastened I can see the letters, L-A-B-O-R, and it would appear that the excerpt came from Labor but that is as far as I can identify it.

With respect to Plaintiffs' Exhibit #6 for identification this document appears to be a photocopy of the front page of Labor for Saturday, October 20, 1956 but I couldn't say that it is or isn't. It appears to be.

With respect to Plaintiffs' Exhibit #7 for identification it appears to be a photocopy of the front page of the newspaper Labor issue of October 20, 1956, but I can't testify whether it is a copy of the paper or whether it isn't.

With respect to Plaintiffs' Exhibit #8 for identification it appears to be a photocopy of the newspaper Labor issue of Saturday, October 20, 1956 but beyond that I can not identify it.

Plaintiffs' Exhibit #9 for identification appears to be a photocopy of the newspaper Labor, front page issue of Saturday, October 20, 1956. Beyond that I can not identify the photo.

Plaintiffs' Exhibit #10 for identification is a photocopy of what appears to be a front page of the issue of October 20, 1956. Beyond that I can not identify the exhibit.

At the present time no official or representative from our union is on the Board of Directors of Labor. There is no Board of Editors. There is an educational committee which is the Board of Directors. At the present time our union does not have a representative on that Board. My experience as a member of the Board of Directors tells me that there is no regular meeting date for the Board of Directors. The Board endeavors to meet at least annually at the convenience of the members of the Board and it may meet [fol. 135] more frequently than annually if there is business to be transacted. Now the principal business of the Board of Directors has to do with the financial aspects of the operation of the Society. The work of editing the newspaper is carried on by the Editor and his staff and it would only be on occasion should there be some complaint made by some owning labor organization about the editorial practices of the Editor and his staff, that the Board of Directors would review editorial policies. The Editor is under the direction of the Board of Directors and they generally select the Editor and recommend that he be employed, to the stockholders. The stockholders are certain railroad unions. The Board of Directors exercise a general supervision such as is normally exercised by Boards of Directors.

Our Union does not have a person called the National Legislative Representative on our payroll. However, we do have an employee known as our Washington Representative by payroll title that does devote his time to observing legislative procedure in Washington and other duties that he performs for the Union. We have such title in our Constitution but the position is vacant. The position is

vacant by title but we do have a man who is doing in a limited way some of the work that a Legislative Representative would do in Washington. He is full time in Washington. He generally observes the legislation of particular interest to members of our Brotherhood.

With respect to whether his observance of legislation includes his contacting Legislators, Congressmen, he would, if he had occasion, contact legislators in regard to legislation in which we were concerned such as railroad retirement, railroad unemployment insurance, railroad labor legislation and other matters that would directly concern our people on a national level. He's not concerned with legislation except congressional legislation, that is, his responsi- [fol. 136] bility is limited to Congressional legislation. He may receive a telephone call or he may have a visit sometime with some other people that might talk to him about something else in the legislative area that is of interest to our Union on a national level. Our Union has State Legislative Boards in all the States of the United States.

The Washington Representative whom I have just described is paid from the General Fund Account. The State Legislative Boards of the Union are paid from the funds of the State Legislative Board. Those funds are held by the Secretary-Treasurer of each of the Legislative Boards generally its point of residence. Each Local Union in each State remits a per capita tax to the State Legislative Board. The Local Lodge pays that out of its funds. The National man whom I have described does not make any periodic written report on his work or activities. I receive communications from him on occasion either by letter or by telephone or by some personal conference with him. Generally I think each State Legislative Board distributes a report to the Local Unions within their state. We do get some of such reports but it is not a requirement that they furnish each report they issue. Then they send us, generally, copies of their reports as information but I couldn't say we get all, we get some of them. With respect to how often those reports are made I think they are made following the adjournment of each meeting of the Legislature. Now some of the Legislatures only meet every other year, that is my

recollection of what they do. They generally report developments during the meeting of the Legislature.

The duties and work of these legislative boards parallel the duties of the Washington Representative but in the State field.

The situation generally is this, each Local Union has a Legislative Representative. All such Local Union Legislative Representatives of Local Lodges come together at a central point within a State. They, in turn, elect a Legislative Board. Generally, the Board consists of 5 members, Chairman, Secretary, Board of Trustees of three. There are variations but that is the general pattern.

[fol. 137]

Plaintiffs' Exhibit #11 for identification is a photocopy of what appears to be a letter on the stationery of the North Carolina State Legislative Committee and it is signed by J. F. Hodges, with the title, Secretary-Treasurer and my recollection of it is that Mr. Hodges was the Secretary in 1957 in North Carolina but whether he is presently I can't tell you.

I don't know Mr. Burton who is referred to in the letter which is Plaintiffs' Exhibit #11 for identification.

Plaintiffs' Exhibit #12 for identification appears to be a photocopy of a document entitled "Sworn Statement, in Compliance with Chapter 120, General Statutes," and dated "Raleigh, North Carolina, July 10, 1957," and bears the name of J. F. Hodges, Secretary-Treasurer but I can't say that is his signature. I don't know.

Plaintiffs' Exhibit #13 for identification, on its front cover page is titled "Legislative Facts, 1951," and it appears to be a document issued by the Brotherhood Grand Lodge as a supplement to the June 1951 Grand President's Bulletin but I can't check its authenticity beyond that point unless I searched our files to see. "The Bulletin" is sent to all General Chairmen, that is General Chairman of the System Board and all local chairmen of Grievances Committees of all Local Lodges, Secretary of each Local Lodge, President of each Local Lodge and maybe a few others. I wouldn't want to be sure about "maybe a few others" but not generally to others. I think it is duty and function of the representatives of the Legislative Committee in the various states that I have already testified about to seek to obtain

[fol. 138] the passage of the legislation which our Union deems to be to the interest of our Union and to defeat legislation which our Union deems to be adverse to its interests. In the discharge of that responsibility it is their job to seek to influence state legislators accordingly.

So far as I have any knowledge no funds whatsoever of our Union have been used by my permission or authorization or to my knowledge to advance the candidacy or campaign of any particular persons, any persons running for political office. Not to my knowledge have any funds whatsoever of our Union been used with my permission or my authorization or to my knowledge to finance the writing or publishing or circulating of written material in behalf of the candidacy of person for political office.

The Railway Labor Executives Association is a voluntary group whereby the heads of certain Railway Labor Unions associate together for the purpose of advancing the mutual organizational interests, in handling common problems dealing with collective bargaining and such matters as that. That Association was established some time during early 1920's if not in the year 1920, it ante-dates my Presidency of 1928. That Association has offices and headquarters in Washington, D. C. They have an Executive Secretary and he has several officer workers assisting him in handling the business. I do not know whether its two or three or four, but its very small. They have an Executive Committee but I don't think that's ever functioned. It does not have a Board of Directors. It is a voluntary unincorporated association. It meets periodically and tries to get together 10 or 12 times a year. Those meetings are attended regularly by the Chief Executive of the member Unions or their designated representative and that may vary from meeting to meeting, all depending on the availability of that particular Union to send someone. Members are not always in attendance or represented, [fol. 139] but meetings are quite generally attended. That Association has a Chairman, a Secretary Treasurer and a Vice-Chairman, I think.

I generally attend the meetings but in recent years I have been so occupied with other Brotherhood problems that I am represented quite frequently by one of my Vice-

Presidents. We contribute on an agreed-upon basis to support of the Railway Labor Executives Association. I say "we," I mean the member Railway Unions.

The contribution on the part of my union would some of it come out of the General Fund and some of it would come out of the Protective Fund. Generally, our Secretary Treasurer who handles the Account proceeds will decide what fund it may be properly chargeable to.

George M. Gibbons, Cincinnati, Ohio, is Secretary of our Grand Lodge. The contribution which our Union makes to the R.L.E.A. is not the same each year. We pay a specified percentage of each call for funds issued by the Railway Labor Executives Association and the call for funds depends upon the need for money and the balance available in the fund. They may levy a call in the month of April and they may not put out another call until the month of June. The Railway Executives, who meet and make up the Association from time to time, will decide how much they need to call upon the various Unions in the Association for. The R.L.E.A. would designate it as an assessment against the organizations. We would pay it out of our funds at headquarters. The member Unions are supposed to respond according to the assessment of the R.L.E.A. That varies, based on the size of the Union. It is uniform as to the percentage each Union pays but the amount called for in each particular call for the assessment may vary, and every time an assessment is levied you pay that same percentage for that particular Union. [fol. 140] R.L.E.A. is a voluntary, unincorporated Association, consisting of the heads of the member organizations and its purpose is to engage in concerted action for the solution of problems of mutual interest in the field of collective bargaining and problems that affect the welfare of the members of the Unions that are members of the R.L.E.A.

I don't have those records but I think the R.L.E.A. does make a contribution to the Railway Labor's Political League for political educational work. You will have to get that information from the R.L.E.A. I don't know that the R.L.E.A. makes any contributions to the AFL-CIO. I

do not know of it making any contribution to what is called AFL-CIO's Committee on Political Education, C.O.P.E. During the time that Labor's League for Political Education, that is L.L.P.E., was functioning the R.L.E.A. did not make any contributions to it that I know of. I don't think that the R.L.E.A. makes any regular contributions to the Railway Labor's Political League. I think it is only on occasions, as the League has educational projects that require expenditures.

I could not tell you approximately how much last year R.L.E.A. gave to R.L.P.L. because I do not handle the funds of R.L.E.A. I wouldn't have any knowledge or recollection as to the amount. I know there were some but I wouldn't want to guess.

I could not tell you approximately how much my Union paid to R.L.E.A. in 1956 or 1957. I couldn't hazard a guess about that but I could get that information if you wanted it and needed it.

The R.L.E.A. does not make any reports to the Unions which make it up. It doesn't make any reports to the Railway Executives who sit upon the Association as members of the Association. We have a meeting and we agree on certain things. We all make notes and go home and [fol. 141] try to implement what we agreed to do. Minutes of the meeting are kept.

Railway Labor's Political League has headquarters in Washington, D. C. That is a voluntary unincorporated group consisting of the Chief Executive Officer or his representative of most of the Railway Labor Unions, not all of them, but they are all members as individuals and their Unions are not members. Its just a group of people who get together and form Railway Labor's Political League, citizens. That is true of R.L.P.L. in contradistinction to R.L.E.A. Membership in R.L.E.A. is on the basis, that you are a member as the Chief Executive of your Union. The Union, as such, is not a member, but the Unions, as such; do finance the R.L.E.A. It is a good deal like you get together in a bar association to promote the best interest of the legal profession. That's the way we do.

The R.L.P.L. is a voluntary unincorporated corporation. I am a member of the R.L.P.L. It meets very infrequently.

maybe once or twice in a year. It maintains an office in Washington. I think there are two people there, the Secretary and one girl, I believe. Generally, the function of it is to carry on political educational work and to collect voluntary contributions from railway employees and other citizens to assist in electing candidates that favor the same general objectives that railroad employees desire to see accomplished in the Federal Congress.

R.L.P.L. has been active I think since shortly after the Corrupt Practices Act was amended in 1947 by the Taft-Hartley Act. After that amendment was when the R.L.P.L. came into existence. As you know under the Corrupt Practices Act you can't spend any Union funds to influence the election of any candidate for a Federal Office or any delegate to a political convention or to help any political party. The Taft-Hartley Act applies only to national elections. It is a Federal law.

[fol. 142] As to whether R.L.P.L. makes an reports I think they issue financial reports, that is all I've seen. They make those reports to the members of the R.L.P.L., the individuals that comprise the group. Its reports are not in turn communicated back to the officers or executives or governing bodies of our Grand Lodge in any way. They come to individually. I make no official report on them to my Grand Lodge.

My Brotherhood is not affiliated with the R.L.P.L. I am affiliated as an individual. I do not as a general situation, make an official report to my Brotherhood on the activities of the R.L.E.A.

I may sometimes when I have our General Chairmen in to a national conference tell them that we've discussed thus and so, the meeting of the R.L.E.A. and all the Unions have agreed, the heads of the Unions have agreed that they will do thus and so on that problem, if you call that reporting, but that's only incidental to a particular subject we may have under discussion but there is no formal report.

I don't even make that kind of a report to my Brotherhood of R.L.P.L. I am not an official of the Democratic party. At the present time I don't head up any Board of

the Democratic party. During the 1956 election I was Chairman of a Labor Advisory Committee to the Democratic National Committee. I served in that capacity just during the last campaign, the 1956 campaign. In that position I just helped create public sentiment favorable to the candidates that the Democrats had nominated. As to whether I made speeches in their behalf, I undoubtedly made some reference to it, but to go out to make a political speech, no, but discussing the general political climate of the country in regards to the welfare of the members of my Union I probably said something about the political issues. The National Democratic Committee did not call upon me in [fol. 143] my position as head of the Labor Advisory Committee to go around and do any public speaking in behalf of that Committee. The extent of the activity of the Committee was that we had a few meetings here in Washington when it was convenient. People were in town to discuss the general situation. My function on that Committee was mainly in a counseling capacity and as an individual citizen.

I am a member of the Executive Council of the AFL-CIO. The AFL-CIO is the American Federation of Labor, Congress of Industrial Organizations Federation. Its a voluntary, unincorporated Association of about 138 national and international Unions. The AFL-CIO does have various departments and subdivisions and Committees. I am presently the Chairman of one of those Committees, the International Relations Committee handling foreign affairs. I am also a member of the Civil Rights Committee of the AFL-CIO. As to whether I am a member of the Legislative Committee of the AFL-CIO, those committees have changed. I was a member but I can't tell you now without my records, I'm on so many, whether I'm presently a member or not.

I was the Chairman of the AFL-CIO Committee on Education but was relieved of that assignment when I took the assignment as Chairman of the International Relations Committee. I am a member of the AFL-CIO Committee on Economic Policy and also a member of the AFL-CIO Committee on Public Relations.

I am a member and on the Governing Board of the AFL-CIO Committee on Political Education, called C.O.P.E. I don't receive any salary whatsoever for my work in connection with these various committees of the AFL-CIO or in connection with R.L.E.A. and R.L.P.L. My pay consists of my salary from the Brotherhood of Railway Clerks.

With respect to my work on the Committee on Inter- [fol. 144] national Relations, I do not know that I care to discuss all that I do on the Committee, but generally what I do is this, we try to promote the Democratic Free Trade Union throughout the world in opposition to Russian Communists. We try to fix economic policy recommendations or to develop economic policy recommendations which are submitted in turn to the Executive Council of the AFL-CIO.

In our Committee of Public Relations we try to develop techniques of handling public relations problems in the way of recommendations, submitted to the Executive Council of the AFL-CIO.

With respect to the Legislative Committee which I was on until recently that Committee did the same thing, developed recommendations on legislative policy submitted to the Executive Council and the Committee on Civil Rights function in the same way. We do not deal with matters of legislation but we deal with civil rights problems but that has to do with the internal problems primarily, where we have civil rights problems among the members of the Unions.

I am a member of the Governing Board of C.O.P.E. Its function is just what its initials or the word implies. It consists of the initials, Committee on Political Education, C.O.P.E. We undertake to educate politically the members of the Trade Union. We generally try to keep them informed of the political problems that concern them as workers, and, of course, disseminate the information to the public, try to acquaint them with our problems that concern the members of our Union.

C.O.P.E. has a staff but I don't know what you mean by large because that is all relative, that term, but its not large in relation to some other things and its not small

in relation to other things. It has an office here in Washington. As to the size of its staff I would be guessing [fol. 145] because I do not have any supervision over the staff, but perhaps 25, would be a guess.

The Executive Council of the AFL-CIO on which I sit is the Governing Body of the AFL-CIO in between Conventions. It is the equivalent of what might be termed a Board of Directors. That Board meets quite generally four times a year. There may be a few special meetings in between but we try to meet about four times a year. The AFL-CIO was not formed until 1955, December. Its predecessor was two other organizations, The American Federation of Labor was one and the Congress of Industrial Organizations was another. And those two groups merged in December, 1955. I was a member of the Executive Council of the predecessor, AFL. I first took that office in 1934. I have been a member of the Executive Council of the AFL-CIO since the merger in 1955 brought the AFL-CIO Federation into being.

The Brotherhood of Railway Clerks pays a per capita tax on our United States members and the AFL-CIO Federation. That tax is paid out of the general funds of the Grand Lodge. I can't testify as to other Unions. I don't know out of what fund they pay their contribution to the AFL-CIO Federation. I can only speak for my own Union. Other unions do pay a similar per capita to the AFL-CIO.

Q. Now, AFL-CIO, though, and its activities and the activities of these committees that we have been enumerating, those activities are financed out of these per capita taxes that are paid by your Union and the other Unions to the AFL-CIO.

A. I so understand.

The per capita tax is determined upon the basis of the number of our members in the United States. I don't know approximately how much money our Union has paid to the AFL-CIO in such per capita taxes. I would just be [fol. 146] guessing. It would probably be in excess of $100,000 last year, that is for the period of 1956 to June, 1957. If you have got a report there you can probably find it. You see, I don't make those payments personally.

The document, Plaintiffs' Exhibit #14 for identification, appears to be a copy of the printed report of the Executive Council, AFL-CIO, to the Second Convention held in December, 1957.

Figures appearing on printed page 7 on Plaintiffs' Exhibit #14 for identification under the heading, "Income, Per Capita Taxes from National and International Unions, December 5, 1955 to June 30, 1955," is $13,210,768.38.

Q. I'll ask you if the same report doesn't show that the per capita taxes, initiation and reinstatement fees from Local Unions during the same period of time wasn't two million, somewhat in excess of two million?

Objection—Overruled—Exception #47.

A. In the report on Page 7 it shows that per capita tax, initiation and reinstatement fees from Local Unions during the period December 5, 1955 to June 30, 1957 was $2,145,344.13.

Q. In the report on Page 7 it shows that per capita tax, initiation and reinstatement fees from Local Unions during the period December 5, 1955 to June 30, 1957 was $2,145,344.13.

Mr. Kramer: Your Honor, there is no evidence that these figures are accurate. Mr. Blakeney is merely reading them from a report and asking Mr. Harrison to verify them. The mere fact that they are on a piece of paper can shed no light on the issues in this case, and obviously I can't cross examine a piece of paper to find out [fol. 147] whether he is telling the truth or not. Mr. Harrison if he knows that is the amount the union paid, he is asked if that is the amount that paper says, and if he says it does, I can't cross examine a piece of paper.

The Court: Mr. Kramer, in view of Mr. Harrison's relationship to both the B.R.C., and the AFL-CIO Executive Committee, and in further view of the fact that he makes the statement that he does know that report was made and does know that the contribution was made by the B.R.C., etc., I think that would evidence that would be competent.

Mr. Kramer: Your Honor, may I point out, I don't have that piece of paper here, if you had it you would see that

these figures appear not to be the report of the Executive Committee, but the report of the secretary-treasurer, you don't have that piece of paper here.

Mr. Blakeney: Here is the piece of paper.

Mr. Kramer: That is the report of the secretary and treasurer and not the Executive Council.

Mr. Blakeney: The whole thing is the report of the Executive Council for 1957 at the Second Convention, and then after preliminary pages and tables of contents and introduction, there comes the financial reports respectively submitted by William F. Schnitzler, Secretary and Treasurer of the AFL-CIO.

Mr. Craighill: If the Court please, as a matter of precaution I don't know whether that matter he is going to read is going to be admitted in evidence, it is certainly not in evidence now and we object to reading any part of it to the jury at this point.

The Court: I think it is competent. Objection is over-[fol. 148] ruled—Exception #48.

A Printed page #8 shows that the AFL-CIO Federation received from the Brotherhood of Railway Clerks, December 5, 1955 to June 30, 1956, $65,214.36; and during the period July 1, 1956 to June 30, 1957, $153,237.46, and I should say that that is per capita and assessment.

Q. Per capita and assessment?

Mr. Kramer: Same objection, Your Honor, the witness is not testifying of his own knowledge, just from the paper.

The Court: Overruled. Exception #49.

A. Yes.

The AFL-CIO has put an assessment on us in addition to the per capita tax during that period or part of that period of time. I think the latter is the case, part of that period of time.

Printed page 14 of Plaintiffs' Exhibit #14 for identification shows that for the Charlotte Region, during the period December 5, 1955 to June 30, '56, expenses amounting to $93,981.20 were paid. July 1, '56 to June 30, '57, expenses amounting to $125,467.71 were paid.

Q. And does the same report show that the Total Re-

gional Office expenses paid out by AFL-CIO during the period December 5, '55 to June 30, '56 were $1,729,228.08, and during the period July 1, '56 to June 30, '57 they were $3,043,123.51?

Mr. Kramer: Same objection hearsay and irrelevant.

The Court: Overruled. Exception #50.

A. Printed page 14 of Plaintiffs' Exhibit 14 shows that [fol. 149] the total expenses for all Regions during the period December 5, '55 to June 30, '56 was $1,729,228.08, and for the period July 1, '56 to June 30, '57, the payments amounted to $3,043,123.51.

Q. Mr. Harrison, does not the same report show that the AFL-CIO spend out for radio programs during the year December 5, 1955 to June 30, 1956, the sum of $411,720.22, and for the period July 1, 1956 to June 30, 1957, the sum of $649,596.98?

Mr. Kramer: Same objection, and on the additional grounds that as the present record shows, if it is traced back as to how much came from this Union, it would be about less than one per cent, and therefore such evidence is not material because getting down to individual members of this Defendant union, his share of that would be so trivial as to be—

The Court: Overruled.

Mr. Kramer: It comes down to a small fraction of one cent.

The Court: Overruled. Exception #51.

A. Printed Page 17 of Plaintiffs' Exhibit 14 shows the figures that you've just put on the record.

Q. Thank you, sir. Does the same report show that the AFL-CIO spent out for legislative purposes during the period December 5, 1955 to June 30, 1956, $92,343.01, and during the period July 1, 1956 to June 30, 1957, $139,071.74?

Mr. Kramer: Your Honor, same objection. This gets it down to a percentage of a small fraction of one cent, and therefore is not material.

The Court: Overruled. Exception #52.

[fol. 150] A. Printed Page 13 of the report shows the figures you've just put in the record.

Q. Does the same report show that AFL-CIO spent out for international affairs during the period December 5, 1955 to June 30, 1956 the sum of $232,860.72, and during the period July 1, 1956 to June 30, 1957, the sum of $618,036.12?

Objection—Overruled—Exception #53

A. The report shows the information you just put in the record.

Q. Does the same report show that the AFL expended to or through its Committee on Political Education, C.O.P.E., during the period December 5, 1955 to June 30, 1956, the sum of $352,372.18, and during the period July 1, 1956 to June 30, 1957 the sum of $365,722.04?

Objection—Overruled—Exception #54.

A. Printed Page 19 of the report shows the information you've just put in the record.

Q. And does the same report show that AFL spent out to or through its Civil Rights Committee during the period December 5, 1955 to June 30, 1956, the sum of $25,465.66, and during the period July 1, 1956 to June 30, 1957, the sum of $69,618.79?

Mr. Kramer: Same objection, and may I point out that we are getting down to figures which come to less than one-two-hundredths of one percent per person, such figures could have no materiality.

The Court: Overruled. Exception #55.

A. Page 19 shows the information you've just put in the record.

Q. Does the same report show that the AFL-CIO made [fol. 151-2] contribution during the period December 5, 1955 to June 30, 1956 as follows, among others: To AFL-CIO International Free Labor Fund—strike that question. Does the same report show, Mr. Harrison, that during the period December 5, 1955 to June 30, 1956, the AFL-CIO made contributions, among others, as follows: For the Preservation of Free Public Schools, $5,000.00?

Mr. Kramer: Objection, this is getting down to a fantastical fraction of a cent.

The Court: Overruled—Exception #56.

A. The report on page 21, during the period December 5, '55 to June 30, '56, shows that $5,000.00 was contributed for the Preservation of Free Public Schools.

Q. Does the same report show that for the period July 1, 1956 to June 30, 1957 the AFL-CIO made contributions, among others, as follows: To AFL-CIO International Free Labor Fund, $25,000.00; to National Hell's Canyon Association, $5,000.00; to National Religion and Labor Foundation, $2,000.00; to Southern Regional Council, Inc., $5,000.00?

Objection—Overruled—Exception #57.

A. Printed Page 21 of the report shows the information you've just put in the record.

Q. Does the same report, Mr. Harrison, show that during the period November 5, 1956 to June 30, 1957 the AFL-CIO contributed to or through its International Free Labor Fund, among others, the following: To International Confederation of Free Trade Unions—Free World Solidarity Fund, $25,000.00; to Tanganyika Federation of Labor, $2500.00?

Mr. Craighill: Your Honor, of course these objections go among other things, this is merely asking him if the re- [fol. 153] port made by some other individual, not this witness, does not say these things, and he is not asking if they are true, he is not asking if he knows whether or not they are true, just asking if the report made by the secretary of the CIO, who is not the witness, does not say these things. I just want the Court to understand the objection applies to all of these questions on that basis which was originally made for this.

Mr. Blakeney: The witness has testified that he is a director of the Executive Council whose report this is.

Mr. Kramer: No, those figures come from somebody else's report, the figures are the report of the secretary and treasurer which is included in that small volume.

Mr. Blakeney: The report of the Secretary and Treasurer of the AFL-CIO is part and parcel of the report of the Executive Council of the AFL-CIO, and he is a director and it is the organization of which this union is a member and to which this union is paying the amounts of money that have been shown.

The Court: The Court thinks you can give them, in view of Mr. Harrison's connections with this organization, that is overruled. Exception #58.

A. Printed Page 27 shows the information you've just put in the record. The Tanganyika Federation of Labor is a Federation of Labor consisting of the Free Trade Unions in Tanganyika and contributions were made, as the records show, to promote the expansion of the Tanganyika Federation of Labor in opposition to the efforts of the Russian Communists to build a Trade Union movement in Tanganyika. Tanganyika is in Africa; my recollection, Central Africa.

As to whether the Railway Labor Political League makes any reports of its receipts and expenditures to the Clerk [fol. 154] of the House of Representatives of the United States Congress pursuant to the requirements of the Federal Statute, I would assume it complies with all applicable laws, but will have to consult the officers of the League. It is my impression that they do. To make a statement under oath that they've filed all such reports I can't because I don't have the custody and responsibility for doing that. It is my understanding that they comply with the applicable law and file reports.

Q. I show you here a document, Mr. Harrison, marked for identification as Plaintiffs' Exhibit #15, and marked on the front "Labor Union Expenditures," down at the bottom, "Staff of the Senate Republican Policy Committee, November, 1955," and turning over to the portion of this document which is headed "Railway Labor's Political League," I'll ask you to look at the second page of this latter division and ask if, insofar as you know, it shows a correct tabulation of payments made by R.L.P.L. on April 3, 1954 to Terry Sanford, State Manager, Raleigh, North Carolina, in the amount of $1,000.00; on May 17,

1954, to Terry Sanford, State Manager, Raleigh, North Carolina, in the amount of $1,000.00, and on May 27th, to Terry Sanford, State Manager, Raleigh, North Carolina, in the amount of $2,000.00?

Mr. Kramer: Object, Your Honor, now we come to a statement Mr. Harrison is asked to read from another piece of paper prepared by the Republican Senate Policy Committee. You may find some basis for it, apparently you did for holding Mr. Harrison's response for the statement of the other report, but you could hardly hold him responsible for the statements contained in a report prepared by the staff of the Republican Senate Policy Committee. All Mr. Blakeney is asking Mr. Harrison is to read that report and state the figures that appear there, I certainly cannot cross examine it, and if that is not hearsay I never saw it.

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[fol. 162] Cross examination.

The initiation fee on any given road is uniform but it may be at or above the minimum of $7.50 but whatever the figure is it would be the same for everybody working for a particular road.

In connection with the Death Benefit payment that is paid in the case of all members who die providing the member is a member of the Death Benefit Department and he can meet the rules and regulations of the Department; why, then the benefits would be paid to his designated beneficiary or in the absence of that, pursuant to the rules of the Death Benefit Department. The man is not entitled to any benefits if he attained the age of 60 at the time he applies for membership in the Death Benefit Fund. There is one technical point that I would like to straighten out. At the time the application is received by the Death Benefit Department he may have been just one day within 60 and filled it out but we didn't get it until after he passed the mark.

In connection with the newspaper "Labor," if a Local Lodge decides to subscribe to that publication the Grand Lodge pays 20¢ per year per subscriber.

The newspaper "Labor" also has a substantial number of individual subscribers. Any individual can subscribe for the newspaper "Labor" if he will pay a subscription fee. The present subscription rate for a System Board to subscribe for all members represented by the System Board is 75 cents per subscriber per year. It is the same in the case of a Local Lodge, 75 cents for a subscriber per year. That is the present subscription rate.

In connection with the Legislative Committee in the various states the function of the Board of Trustees is nothing more than to audit the accounts of the Board. I [fol. 163] should add the Chairman passes on the validity of the bills and must approve them before they are paid.

I am a member of the American Heart Council. I do not get any salary from that. I am a member of the American Cancer Association. I do not get any salary from them. I am a member of the Advisory Committee to the President of Cincinnati, Ohio University. I do not get any salary for that. I am not otherwise paid for the time I devote to these activities. There are roughly 12½ million members, maybe 13 million in the Unions that are affiliated with the AFL-CIO.

In the period December 5, 1955 through June 30, 1957 there were approximately 15 million members. We expelled several organizations of substantial size during that period.

Local Unions of the AFL-CIO are Local Unions directly chartered by the AFL-CIO and they would be the counterpart of Local Unions of my particular Brotherhood or any other national or international Union. They are local groups chartered directly by the AFL-CIO for which there is no national or international Union. Since there is no national or international with which they can affiliate they are chartered directly by the Federation.

With respect to the various statements in the report of the Executive Council of the AFL-CIO which counsel for the plaintiff read to me I do not have any personal knowledge of the truth of those statements because I do not handle the financial records of the AFL-CIO. I do not know whether the amounts were accurate. I would have no way of determining that.

With respect to the Plaintiffs' Exhibit #15 for identification which was the report of the staff of the Republican Policy Committee I have no way of knowing whether any of the statements in that document are true. I had nothing to do with the preparation of the report. I do not [fol. 164] have any information available to me. Even if we assume the substantive statements are true I do not know whether the amounts stated are accurate.

With respect to Plaintiffs' Exhibit #16 for identification it contains the statement that the R.L.E.A. has affiliated with it all the Railroad Organizations except the Brotherhood of Locomotive Engineers, undoubtedly that statement is true at the time the article was written. They were not affiliated. Presently the Brotherhood of Locomotive Engineers are affiliated with the Railway Labor Executives Association.

Redirect examination.

To the best of my knowledge I would assume that statements and the report of the Executive Council to the 1957 AFL-CIO Convention were true and accurate but to say that they are I could not swear to that, and the particular financial figures mentioned I think they are in the reports of the Secretary-Treasurer of the AFL-CIO contained in the book entitled "The Report of the Executive Council."

I could not say that they are true or untrue. I think they are to the best of my knowledge and belief. I could not say whether the reports filed by the R.L.P.L. and C.O.P.E. are true. I would not say because I have not seen those reports. I can't testify one way or the other as to the accuracy of the report of the R.L.P.L. or C.O.P.E. to the Clerk of the House of Representatives. I've never seen such reports.

The Court: All right, Ladies and Gentlemen of the jury, you will return to your room, please.

(Whereupon, the jury went into the jury room.)

[fol. 184] DEPOSITION OF JESSE CLARK

JESSE CLARK, examined as an adverse witness by the plaintiffs, pursuant to an order of the Superior Court of Mecklenburg County, at the offices of Schoene & Kramer, Attorneys, 1625 K Street, N. W., Washington, D.C., on April 16, 1958, testified:

I am President of the Brotherhood of Railroad Signalmen of America. Our Union has a Grand Lodge. We do not have System Boards of Adjustment under that name. We call them System General Committees. I understand that the function of these System General Committees is of the same general nature as the so-called System Boards of Adjustment in some other unions, as for instance in the Railway Clerks Union. We have subordinate lodges in our union. We have two local lodges on the Southern Railway proper. Local 110 covers the so-called lines east of the Southern and Local 49 covers the lines west. I do not know exactly where the division between the lines east and west is. Our union has 218 local lodges, in all and approximately 16,000 members. Our union takes into its membership employees doing installation, constructions and maintenance of railway signal facilities and incidentally, highway crossing protective devices. The local lodge that covers Charlotte, North Carolina is Local 110. I do not know who is the president of that local. The local lodge handles the local collective bargaining questions and grievances and adjusts disputes between manage-
[fol. 185] ment and labor concerning rates of pay and working conditions. The local lodge handles the local collective bargaining questions and grievances and if you have disputes between management and labor pertaining to rates of pay and working conditions. The System General Committee has practically the same general function with the exceptions that they cover the entire system. The local lodge is confined to part of the system or territory. By entire system I mean the entire railroad system.

The Grand Lodge is, you might say, graduated from the subordinate and General Committee. The Grand Lodge handles collective bargaining agreements; it negotiates

contracts; it handles disputes on the higher level; it prepares all disputes before the National Adjustment Boards all over the country. It performs the other general duties of a national organization.

The Governing Board of our Grand Lodge consist of a Grand General Executive Council, Executive Council composed of the President, that is myself; the secretary treasurer and six vice presidents. It's a Board of eight.

Plaintiff's Exhibit 19 is the Constitution and By-Laws of my Union which is now in force and effect.

A person becomes a member of my Union by filing an application form with the subordinate Lodge officers and then the application is considered by the subordinate Lodge and the applicant is voted into membership.

We have an understanding under which we generally accept as compliance with the Union Shop Agreement the payment of periodic dues, fees and assessments by persons who are unwilling to file an application for membership. That sort of compliance was agreed upon in the Atlantic Coast Line Agreement. While the Coast Line [fol. 186] Agreement is not, as such, applicable to the Southern System, we do follow the same rule with regard to what constitutes compliance.

I know of no instances to my knowledge where any individual has tendered money, periodic dues, fees and assessments but has been refused membership by my union and their money returned to them by reason of the fact that they declined to make application for membership. I know of no instance in which any person has been refused membership because of their failure to sign the application upon tendering the dues, fees and assessments demanded.

The minimum initiation fee in our Union is $5.00 and there is a maximum of $20.00. There is a minimum for periodic dues in our Union in our constitution of $2.00 per month. That ranges upwards to varying levels depending on the needs of the subordinate lodges and the general committees. The Subordinate Lodge fixes the amount of periodic dues above the minimum prescribed in our Constitution. The same is true as to the initiation fee but that must be incorporated in the by-laws of the Subordinate Lodge and approved by my office.

I do not know what the initiation fee now is on the Southern Railway nor do I know what the periodic dues now are on the Southern.

We have had only one assessment levied by our Grand Lodge in the last 40 years. That was an assessment of $5.00 per member about four years ago.

The $5.00 initiation fee all goes to the Subordinate Lodge with the exception of $1.50 which comes to the Grand Lodge. None of it goes to the System General Committee. The System General Committee is financed by a per [fol. 187] capita tax. The minimum periodic dues of $2.00 per member per month are divided into a per capita tax to the Grand Lodge and the General System Committee where they have general system committees and the subordinate lodge. The per capita tax out of the periodic dues which goes to the Grand Lodge is $1.50 per member per month. There is no fixed level as to the amount of per capita tax that goes to the System General Committee. The Local Lodge would get the remainder.

When the share of the initiation fee and per capita tax on the periodic dues reaches the Grand Lodge it is divided among the following different funds or accounts: the building fund, the general fund, the legislative fund, the contingent fund and a state legislative fund. I believe that is all of them. We do not have any sort of death benefit fund nor any kind of insurance payment arrangements.

The building fund I mentioned is the building fund that was created to buy our Grand Lodge headquarters and it now exists for the purpose of maintenance and upkeep and we hope to build another building some day to improve the one we now have.

The general fund is used for the general operation of the organization, being the salaries of the Grand Lodge officers, staff, maintaining the general work, printing, and things that go with the paying of expenses on the road, normal operating expenses.

The State legislative fund is a fund maintained for the payments of legislative representatives in the several states for reimbursing them for lost time and the expenses they may have. That comes in the case of our Union from the Grand Lodge.

The contingent fund is what it implies. It is contingent, emergency.

[fol. 188] Our organization publishes and circulates a monthly publication, "The Signalmen's Journal." We do have a Journal Fund. That is the only publication put out by our Union. It is issued once a month and goes to all members.

Our Union is one of the owners of the paper "Labor." I do not happen to be a member of the Board of Directors of the Company or society which publishes that paper.

In our Union the subscriptions to the publication "Labor" are handled either on an individual or subordinate lodge basis. A subordinate lodge usually subscribes for all of the members of the subordinate lodges. In such a case it pays the subscription fees direct to Labor and does not remit through the Grand Lodge. I could only guess to the proportion of Local Lodges which subscribe to Labor but my guess is that it is not over 20 out of a total of 218. I do not know whether the Lodge covering Charlotte, North Carolina does so subscribe.

Upon so subscribing a Lodge would pay for Labor out of its local treasury which is made up of funds obtained almost entirely from initiation fees and periodic dues.

We do not have a state legislative committee as such. We have a state legislative representative in each state, one man. I believe the state legislative representative in North Carolina is named Higgenbottom—Higgenbothem or Higgenbottom. As state legislative representative he considers matters of interest to labor on the state level. It is his duty to keep up with legislation at the State Capitol, contact legislators and seek to influence and obtain legislation which our Union considers desirable, to defeat legislation which our Union considers undesirable. The money that goes to him is from our Grand Lodge, not from our [fol. 189] Local Lodges. He makes official reports of his activities or work as legislative representative in the way of a letter and usually gives us a summation at the close of the legislature of the bills that have been enacted or what has happened.

I am a member of Railway Labor's Executive Association. I sit on that Association as President of our Union.

We do not pay a fixed amount per year but R. L. E. A. but rather we pay as the assessments are levied. The percentage of the assessment which our Union pays and the other unions pay is predetermined and fixed but the amount of the assessment depends upon what the Association from time to time may decide. When such an assessment is made we pay it from the general fund of our Grand Lodge. That is the General Fund derived from our share of the initiation fee and per capita tax that comes out of the periodic dues paid in by members to the local subordinate lodge and then paid by it from that Lodge to the Grand Lodge.

I should qualify my statement about the manner in which the initiation fees and periodic dues from the lodge or subordinate lodges go into the various funds of the Grand Lodge. All monies that come to the Grand Lodge go into the general fund and then we make transfers at the end of each month into several funds.

The entire monies coming to the Grand Lodge are derived from two sources, our share of the initiation fee and the per captia tax upon the periodic dues.

I am a member of the Railway Labor Political League and sit upon that body too. The Railway Labor Political League gets its fund by individual subscriptions of citizens, voluntary subscriptions. There is no other source of the monies of the R. L. P. L. as far as I know.

[fol. 190] I do not sit upon the Executive Board of the AFL-CIO and I am not a member of any of the committees or Departments of AFL-CIO.

The Union pays its regular per capita tax to the AFL-CIO. That per capita tax is so much per member per month. The Convention of the AFL-CIO determines how much that tax shall be. The Executive Council of the AFL-CIO makes a recommendation to the Convention as to the amount the tax shall be. It has varied from time to time. In fact, they did levy a one cent assessment sometime ago. We paid that assessment plus the regular per capita tax but I think at the Convention last December they adjusted the per capita tax and there is no more assessment. That is, they adjusted that per capita tax up so as to include the former per capita tax and the assessment.

The per capita tax which the AFL-CIO levies upon our Union is paid out of the general funds of our Grand Lodge.

I know Mr. E. C. Melton. He is what we call our General Chairman of the System General Committee on the Southern Railway.

I believe Mr. R. L. Heilig is Secretary of the Local 110 which is the Local that covers Charlotte, North Carolina.

Plaintiff's Exhibits 20(a), 20(b) and 20(g) are typical copies of applications for reinstatement to membership in our Union.

Plaintiff's Exhibit 20(e) is a typical application for membership in our Union.

Plaintiff's Exhibits 20(d), (e), (f), (h) and (i) represent letters sent to persons not members of our Union and working for railways with which we have a Union Shop Agreement. I have sent some such letters and I would say [fol. 191] they are typical. However, such letters are sent out by subordinate lodges or the general committee and I do not know whether these are typical.

Cross examination.

The duties of the General Committee as compared with the Local Lodge are relative. The General Committee operates on a higher level but in general, has the same duties as the Local Lodge. The General Committee may handle a local grievance which the local chairman cannot dispose of. The Grand Lodge might also handle some other local matter that neither the Local Chairman nor the General Chairman can dispose of.

The variation of initiation fees from a minimum of $5.00 to a maximum of $20.00, may occur on one particular railroad where there is more than one subordinate lodge. The amount is determined by each subordinate lodge. Within any given subordinate lodge the initiation fee is uniform for all members. The same is true of dues. It might vary from lodge to lodge but within a local lodge it would be uniform.

The per capita tax for General Committee is the same throughout a railway system. The only variation would be the local lodge dues or the local lodge initiation fee.

I am familiar with the newspaper, "Labor." It is a newspaper devoted to Railway Labor Matters. I think it is a newspaper pertaining to what its name implies. It is an educational society. The information it contains pertains primarily to items of particular interest to railroad workers.

Plaintiffs' Exhibit 20(d) through (f) and 20(h) through (j) are typical of the kind of information we put out but I don't think all lodges use just exactly that form.

* * * * * * *

[fol. 217] (The Jury Returned to the Panel.)

OFFERS IN EVIDENCE AND RULINGS THEREON

The Court: Now, Gentlemen, let me see if I can make an entry in the record that will be satisfactory to both of you. The plaintiff at this time offers a purported copy of a report filed by the Railway Labor Political League—

We are talking now about the R. L. P. L., with the House of Representatives as required under Title 2 of the Code, Section 244, U. S. Code Annotated, and the defendant makes no objection to same upon the ground of its authenticity, but does object upon the grounds that the same is not otherwise competent. Does that take care of your position all right?

Mr. Kramer: Yes.

Mr. Blakeney: Plaintiff offers in evidence what has been marked for identification Plaintiffs' Exhibit 14, the same being a paper writing dated January 1, 1957, on the letterhead of Railway Labor Political League, 4013 D Street, N. W., Washington, D. C., and I would like to read it.

The Court: All right.

(Whereupon the document was marked Plaintiffs' Exhibit 14 and received in evidence.)

Exception No. 68.

Mr. Blakeney: Plaintiffs offer in evidence a paper writing which has been marked for identification Plaintiffs' Exhibit No. 15, and I would like to read from this.

The Court: Now I will make this entry and see if it is satisfactory with you gentlemen. The plaintiffs offer in evidence part of a report filed by the Committee on Political Education with the House of Representatives, covering expenditures in the fall of 1956, as required by the Statute, [fol. 218] Title 2 of the United States Code, Section 244, the defendant does not object because same is not authenticated, but does object or does generally object otherwise upon the grounds that same is incompetent. It is stipulated that were the full report present, it would show that no contributions were made by any of the defendants in this cause, and that no—does that take care of it?

Mr. Kramer: None of the receipts that Paragraph 1 shows, that none of them came from any union defendants. One other point, your Honor, there was a slight error in the statement you made, of no materiality but as to the year 1956 because it contains a partial list of the expenditures during 1957.

The Court: Well, of course we will amend it to that, and part of the year 1957,

Mr. Blakeney: And as I understand, what you dictated is that the receipts show, the full report would not show or include any listing of the defendants?

(Whereupon, the document was marked Exhibit 15 and received in evidence.)

Exception No. 69.

* * * * * * *

[fol. 220] Mr. Blakeney: As I was about to say, your Honor, the plaintiff rests there, except that there are two or three of the plaintiffs whose testimony would be cumulative and repetitive to the testimony already given, and I tender them as witnesses who would merely state what the others have stated with respect to the propositions that they do not desire membership in the union, do not desire [fol. 221] to pay the monies required to the union shop agreement and are opposed to doing same, and for the uses which they contend the evidence to establish is part of the monies, with that tender we rest.

Court: Do you want to cross-examine any of them?

Mr. Blakeney: I will say that there are the following plaintiffs who are no longer in the employment of the company, if I may call those over to you: Mary Callaham is no longer an employee of the Southern Railway; Katherine Snaveley, no longer an employee of the Southern Railway; John Jordan is now a supervisor of the Southern Railway and would not be subject to the union shop agreement, as I understand.

Plaintiffs Rest

MOTION FOR NONSUIT AND RULING THEREON

The defendant unions moved for a nonsuit.

Motion denied with respect to defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Steamship Employees and Brotherhood of Railway Signalmen of America, and motion for nonsuit granted as to all the other defendant unions.

Exception #70.

Union Defendants' Evidence

G. A. LINK testified for defendants:

I am an official of the Brotherhood of Railway Clerks, being general Chairman of the Brotherhood of Railway Clerks, Southern Railway System lines. I am the highest official of the Brotherhood of Railway Clerks on the Southern Railway System. Among my duties as general Chairman is the duty of serving notice on the railroad when we desire a change in the collective bargaining agreement.

On February 10, 1951, I served a notice on the Southern Railway System under Section 6 of the Railway Labor Act in which we requested the negotiation of a union shop [fol. 222] agreement.

Plaintiffs' Exhibit #1 is the agreement that was the culmination of the negotiations pursuant to that notice.

After the notice was served, we followed the machinery of the Railway Labor Act through direct negotiations and

into mediation and through the emergency board before the agreement was finally signed in February, 1951.

I am familiar with the 40-hour week agreement between my union and the Southern Railway having participated in the negotiation of that agreement. At the time we served the notice for the 40-hour week, I would say that roughly 7% to 10% of the employees in the clerks' craft were on a 7-day week. I do not know the percentage, but it was a small percentage. The rest worked 5½ days or 6 days with six days' pay. At the time we served the notice there were a large number of people in the clerks' craft who were on furlough, I should say between 10 and 15 per cent of the clerks of the Southern Railway were unemployed at that time. That was in 1948 when we served the notice.

The agreement for the 40-hour week was dated September 1, 1949, effective the same date. The negotiations for the agreement preceded that date. Under that agreement the employee work-week was changed from six days to five days without loss in pay, which resulted in a 20% increase in pay, and on top of that they got a 7¢ an hour increase. The 20% was calculated so that the men would get paid for five days what was formerly six days' pay. Men who had previously worked seven days now worked only five days. The former 7-day workers got for five days six days' pay plus 7¢ per hour for the hours they worked.

My jurisdiction as general Chairman extends over the entire Southern Railway System. There are 70 lodges of the clerks' union on the Southern Railway System. I try to get around to as many lodges as I can and I do get around [fol. 223] to a substantial number. I have never heard of the political campaigns being discussed at lodge meetings. Political campaigns were never discussed during meetings.

Defendants' Exhibit #1 is the membership application currently in use by the Brotherhood of Railway Clerks. This form has been the membership application form for our Brotherhood for approximately five years.

Defendants' Exhibit #1, being the application form of the Brotherhood of Railway Clerks, was received in evidence and read to the Jury.

There is nothing in the application form which requires an applicant to agree to abide by the rules and regulations and edicts of the Brotherhood or anything like that.

As an officer of the Brotherhood of Railway Clerks, I am familiar to some extent with its financial affairs. I know that the Brotherhood has investment in bonds and other securities from which it derives an annual income of something over $300,000—$304,000 or $305,000 per year. This $300,000-plus represents interest on the investment. That is, it has income from investments of over $300,000 per year. The Brotherhood of Railway Clerks has had such income ever since I can remember. Certainly from a time prior to 1953.

G E. LEIGHTY testified for defendants:

I am President of the Order of Railway Telegraphers and have been President of that organization since 1946. Prior to that time I held office as First Vice President, General Chairman, Deputy President, and various local offices. I have held an official position of one kind or another in the Order of Railroad Telegraphers for approximately 37 years. This is not the same organization as the Signalmen. I am also Chairman of the Railway Labor [fol. 224] Executives Association since 1950.

The non-operating railway organizations are the shop craft: the clerks, the maintenance of way employees, the signalmen, the train dispatchers, yardmasters, the dining-car employees, the master mates and pilots, and machinists, longshoremen, and telegraphers. There are some other organizations that are listed in that particular group for which the non-operating unions usually does not negotiate such as pullman porters and supervisors who negotiate individually for their own organization. Part of those I mentioned are the organizations which appear as parties to the union shop agreement on the Southern identified as Plaintiffs' Exhibit #1.

On some issues these organizations known as the non-operating organizations negotiate collective bargaining agreements with the railroads of the country as a group.

The occasion on which they bargain with the railroads as a group are in connection with wage matters, negotiation with respect to working rules, with respect to the 40-hour week and with respect to the union shop. They negotiate as a group with respect to those matters in which it is important that the results be uniform and on a national basis.

The Railway Labor Executives Association, commonly called RLEA, is an association composed of all chief executives of all the so-called recognized standard railway labor unions including the operating unions. We handle matters in which we have a joint interest through the RLEA. The RLEA acquires revenues from assessments made on a percentage basis based on the number of members of each of the unions with a proviso that it be based on a minimum of 1,000 members and a maximum of 70,000 members. Each of the executives has equal voice in voting in all of the affairs and in order to arrive at a reasonable basis for that kind of voting we agreed on a minimum of 1,000 members and a maximum of 70,000 members in determining our assessments. The RLEA makes assessments from time to [fol. 225] time. The Brotherhood of Railway Clerks as of this date pays 11.16% of the total assessments. The Brotherhood of Railway Signalmen pay 2.07.

The non-operating organizations have a committee for the purpose of conducting their negotiations as a group. That committee is generally called Employee National Conference Committee Cooperating Railway Labor Organizations and the number varies from time to time depending upon how many labor organizations are participating. I am a member and chairman of that committee. I have been chairman since March, 1947.

I am not an officer of the AFL-CIO. The Order of Railway Telegraphers is affiliated with the AFL-CIO and the chief executive of each organization is a member of the general board. I would hardly consider that as an officer. The general board of the AFL-CIO is composed of the presidents of all the International Unions that are affiliated with the AFL-CIO. I am a member of the general board of the AFL-CIO. The general board of the AFL-CIO is the governing body between the conventions. In other words,

the conventions are held every two years and the general board meets every year in which a convention is not held.

I am familiar with the recent national movements of the non-operating organizations as far back as 1937. The Clerks and Signalmen participated in each of these movements. The first such national movement was a wage increase effective January 1, 1946, of 16¢ per hour. That first movement was really a consolidation of several regional movements. Then on May 22, 1946, it resulted in an increase of 2½¢ an hour. In connection with the 1946 movement, individual organizations served notice beginning as early as April, 1945. By agreement with the carriers in the latter part of 1945, it was agreed that all the various questions, some of which were for rule changes, shorter work-week and also wage increase were consoli- [fol. 226] dated into a uniform demand of 30¢ an hour. That increase request was heard by two arbitration boards and an emergency board, and later was settled in the White House. A period of more than a year elapsed between the time the movement was initiated and the final settlement. But that was not the conclusion because only the railroads that were members of the Railway National Conference Committee were parties to the settlement. After we settled with them we then had to negotiate with almost 200 so-called smaller railroads that were not parties to the national movement so that it actually required a period of more than two years.

There was a separate emergency board for the smaller railroads. There was still another emergency board for the Express Company. Some of the Express Employees were represented by our organization; some of them by the Blacksmiths and the Machinists. The cost of that joint movement to the Employees National Conference Committee as distinguished from the individual organizations was approximately $140,000. That would have been about one-third of the total cost because each of the organizations provided research men who are necessary in the handling of data so the actual amount spent by the committee is spent for services that the organization could not provide themselves. We had the Labor Bureau of the

Middle West as our research people. We had attorneys employed to present our case to the various boards and to assist us in making our agreement. We had to provide for considerable printing, particularly of the Exhibits and other expenses that go towards a joint movement. I would say that the total cost to the organization as well as the committee would be very close to a half million dollars.

The next national movement was the arbitration case which was settled in September, 1947, resulting in an increase of 15½¢ per hour. That case was brought to a con- [fol. 227] clusion on a national basis in about six months, but here again we had an emergency board for the short lines and for the nation as a whole it took almost two years before it was brought to a complete conclusion. The costs of our committee in connection with that case were $90,000. In that case, the cost to the committee was less than one-third of the total cost. I would say that it would not be over one-fourth of the total. I think four times $90,000 would be a reasonable estimate as to the total cost.

The next movement was the 1948 movement when we requested an increase of 25¢ an hour plus some overtime concessions and a 40-hour week without loss in pay. The result of that movement was that we received 7¢ per hour effective October 1, 1949, and a 40-hour work week effective September 1, 1949. That was an increase of 20% in base rate. The negotiation to wind up the 40-hour week has not yet been completed. We began that case in the early part of 1948 and beginning September 1, 1949, we had an agreement that we would meet with the railroads to determine the modification of the rules, necessary to make the agreement effective and there are still more than fifty disputes before that dispute committee awaiting adjustment, so our costs with respect to that are still going on. The joint costs borne by our committee as of this date are $480,000. I would say that was about one-third of the total cost. The total cost of that movement would have been a million and a half dollars.

The next movement was the 1950 wage case which was settled at 7 o'clock in the morning of March 1, 1951, at the White House after an all-night session resulting in a 12½¢

per hour increase effective February 1, 1951, with an escalator clause which, during the life of the agreement, has added 13¢ to the basic rate and also resulted in a 4¢ per hour increase effective December 1, 1952, following a hearing before a referee. Before we got that additional 4¢, we had to have further proceedings including hiring of economists, [fol. 228] lawyers and research experts. Costs of that movement were about $160,000. That includes the 4¢. That includes the 4¢. That includes the entire movement because we did not go before the Board prior to the settlement in the White House. I would estimate that the $160,000 would be about one-third the total cost of that movement, thus making the total cost of the movement close to a half-million dollars in all. The escalator clause provides that during the life the agreement there should be additional wage increases given to keep pace with the increase in cost of living as shown by the index of the Bureau of Labor Statistics, a department of the United States Department of Labor. As a result of that movement we got an aggregate of 29½¢ increase in all basic pay rates. The 13¢ was frozen and became a fixed base rate which could not be affected by downward movements of the cost of living escalator.

The next movement was in 1953. That was a rules movement in which considerable changes were made in a number of rules. That movement involved hearing of several months before the Emergency Board and a final disposition by agreement reached on August 21, 1954, in which some of the recommendations of the Board were adopted, some rejected and some modified by agreement between the parties. We secured holidays with pay. We secured additional vacations with pay and we also secured health and welfare with the carriers paying one-half of the cost amounting to 2¢ an hour. The total value of the benefits which the employees received under this agreement has been fairly estimated, but I would say it amounted to between 10¢ and 12¢ an hour.

Prior to this movement the employees did not get paid for holidays on which they did not work. Prior to this movement the maximum vacation was ten days. This movement resulted in increasing the vacation to 15 working days

after the required number of years' service—10 to 15 work-
[fol. 229] ing days, respectively, or one continuous two or three weeks' vacation. By 10 or 15 days, I mean 10 or 15 working days.

The Health and Welfare benefits provided for hospital and surgical care for employees with certain limitations. The carrier paid 2¢ an hour and there was a 2¢ an hour deduction from employees' wages making a total of $6.80 per month, which was used for the purpose of purchasing hospital and medical benefits for employees.

The cost of negotiations necessary to secure the health and welfare benefits was $560,000, because of the strike on the L&N Railway. The amount of $560,000 would be less than a third of the total expenditures by the cooperating organization because some of the individual organizations paid strike benefits in addition to supplying the officers in connection with the conduct of the strike. Thus the cost of the movement would be close to two million dollars. We continue to have expenses in connection with that because it is a continuous operation between the carriers and the insurance companies.

The next movement was the 1955 wage movement which was settled by agreement dated December 21, 1955, providing for an increase in wages of 14½¢ an hour and also providing that the carriers would pay the entire costs of the health and welfare program. In other words, the carriers would pay the 2¢ that had previously been deducted from the employees' wages. That was in accordance with the recommendation of the Emergency Board. In connection with this movement we had negotiations and mediations and emergency board procedure. This required us to retain lawyers, economists, and statisticians. This movement, with respect to the national agreement, covered a period of about nine months, but as to certain roads not included in the national movement, it took more than two years and on a few properties it is not yet settled. Our expenses in
[fol. 230] that connection are still going on. This movement cost us approximately $90,000 which would represent a third of the cost to the cooperating organizations. I would say that the cost to the unions was approximately $270,000.

The next movement was the 1957 wage movement in which a settlement was reached on November 1, 1956, or was effective on November 1, 1956. In that movement the union served a notice for a wage increase of 25¢ per hour. The carriers wanted to know what terms the unions would be willing to agree to as part of a three-year agreement. We told them that they would have to provide some benefits for the dependents of employees and the settlement was finally negotiated providing for an immediate increase to 10¢ an hour, a further increase of 7¢ an hour effective November 1, 1957, and a further increase of 7¢ an hour effective November 1, 1958, with the contract expiring on November 1, 1959. The agreement also provided the equivalent of 2½¢ per hour to be paid by the carriers for the purchase of hospitalization, medication and surgery for dependents of railroad employees. It also provided an escalator clause in the event the Bureau of Labor Statistics index should either go up or down.

The history of the hospital, medical and surgical care has been that at first the railroad paid half of the cost and the employees paid the other half. Then the railroads undertook to pay the full amount. At the present time, the railroads are paying all costs of the hospital, medical, and surgical care plan. The cost of this movement is still continuing. The present cost has been a little over $100,000 but, because of the term contract, we won't know the ultimate cost of the program for another two years.

We are now discussing another movement.

In reviewing the various movements, I skipped the movement for the union shop agreement which we initiated on [fol. 231] February 5, 1951. Prior to initiating the union shop agreement, we first had to secure an amendment to the Railway Labor Act. Prior thereto the Railway Labor Act had prohibited union shop agreements. The Railway Labor Executives' Association worked constantly for quite a period trying to get the Railway Labor Act amended so as to authorize union shop agreements. After the act was amended our non-operating organizations, 17 in number, served notice on February 4, 1951. That movement began with individual conferences on the property and there were several agreements reached. For instance, one with the

Great Northern Railway. The railroads refused to set up carrier conference committees to handle this proposal. They refused to handle it in a joint manner in any way. When the matter went to mediation, the railroads refused to participate in joint mediation proceedings although prior thereto they had been very anxious to have matters of a national nature handled on a national basis.

Our committee on the Great Northern entered into the first union shop agreement. That was followed by negotiations and agreement on the N.Y. Central Railway, the B&O Railway, Lehigh, and one or two other small properties, but the other carriers refused to enter into the agreement with us which eventually resulted in the President of the United States appointing an emergency board to consider the proposal. That emergency board was established in November, 1952, and after holding extensive hearings made its recommendations to the President of the United States. In order to present the unions' case to the Emergency Board, we again had to retain lawyers and economists. That Emergency Board made recommendations to the President of the United States that the carriers should enter into a national agreement with us similar to the union shop agreement which we had negotiated with the New York Central with a few modifications.

After the Emergency Board recommendations we at- [fol. 232] tempted to get the railroads to set up a national committee. They consistently refused. Eventually the railroads in the east set up a committee, most of the railroads in the west set up a committee, but the Southeastern railroads refused to set up a committee.

The great bulk of the railroads of the country signed union shop agreements by June of 1953, but there were some outstanding exceptions. On one large system, the Santa Fe System, the union shop agreement was only negotiated in December of last year following the taking of a strike vote and strange as it may seem the majority of the nonmembers voted in favor of a strike to secure the union shop.

The cost of the union shop movement has not yet terminated. To date the cost of that movement has been $520,000, of which more than $200,000 has been spent in

litigation. The costs have reference only to the national movement.

In addition to the national movements which have been described there have been a number of small cooperative movements involving just one or two railroads. In addition to those cooperative movements unions are constantly negotiating for themselves as individual unions with railroads. Such negotiations are going on all the time. It would be unusual if there were not at least 100 such negotiations going on at any given time.

The notice for the union shop agreement was served on all the railroads by all the cooperating unions at about the same time. Those notices were served on or about February 5, 1951, with perhaps a few weeks' difference in a few instances.

In addition to obtaining increases in wages and changes in other rules the unions participate in the handling of grievances. More than 50% of our work is connected with policing the agreements and securing carrier compliance [fol. 233] with the agreements after they have entered into the agreements. That is, more than 50% of our work is in connection with contentions that the employer has violated the agreement it has signed.

I am acquainted with all the major strikes conducted by the non-operating unions in the course of the last 35 years. The only major strike in the United States by non-operating unions conducted in the last 35 years was the L&N strike in 1955. There was one strike in Canada, but in the United States the strike on the L&N was the first major strike since 1922. Other than that there has been no strike of any significance of these unions acting in concert. There has possibly been one small strike on the Columbus and Greenville, a small property of that kind. Several unions had a strike down there. That was a very small property and the strike was not conducted by any large group. The strike on the L&N covered the whole so-called L&N empire including the NC & St.L.

The operating employees have had several strikes. The operating unions for several years now have been handling their wages and rules negotiations on an individual basis.

That is, each organization handles its own rules and wage movements individually and oftentimes on some individual railroad the organization reaches a situation in which the only way they can secure action is to call a strike.

The Railway Labor Executives' Association and the individual unions participate in proceedings before Congress when bills of interest to them are being considered. We participate in regard to any that we feel affects the employees whom we have the honor to represent. For example, we had at least four amendments to the Railroad Retirement Act since 1946. We have had several amendments to the Railroad Unemployment Insurance Act. We have had an amendment or two of the Railway Labor Act. In that period we were constantly confronted with pro- [fol. 234] posals for legislation that would practically tie our hands with respect to negotiations and we, of course, have attempted to defeat such legislation. I appeared before the Smathers Committee within the past two weeks setting forth the position of the railway employees with respect to the railroads and what should be done.

We appear before Congress and present our views as to anything of a nature which we think would affect the employees whom we represent in any material matter.

In connection with the various national movements of cooperating groups we have had occasion to study employee benefits present in other industries. Most of the employees in other industries are covered by the Social Security Act and, in addition, organizations representing those employees negotiate with the industries for supplemental pensions. In many instances these supplemental pensions are paid at the sole expense of the employer. In some the employees do participate, but the other pension plans of many other industries are more liberal than the benefits paid under the Railroad Retirement Act. We have bills before Congress proposing to improve the Railroad Retirement benefits, the unemployment insurance benefits and to provide some relief from taxes.

In the railroad industry retirement benefits are provided by a separate act whereby the employer pays one-half of the cost and the employees pay the other half of the cost. At the present time, the employee is paying 6¼%

on earnings up to $350 per month. The employer is paying a like amount. There are some supplemental retirement benefits in the railroad industry but they are generally limited to the so-called supervisory employees of the carriers. Generally, they do not extend to the employees represented by my organization. Some of the supplemental retirement plans have limitations such as, if you earn more than $500 a month you are eligible to participate in a pen-
[fol. 235] sion plan. But the number of employees that we represent that earn more than that are very few so it really does not mean anything to the majority of our employees.

Insofar as the mass of our employees are concerned retirement benefits are provided exclusively by legislation. Railroad employees are not subject to the Social Security Act with this one exception: if you have less than ten years' railroad service, then the Social Security provisions apply in connection with any other social security credits that you have, but the vast majority of employees have more than ten years' railroad service.

With respect to unemployment benefits in the railroad industry they are provided exclusively by legislation. In other industries, they are usually paid by the State unemployment insurance which varies from state to state; and, in addition, a number of industries have provided for supplemental unemployment benefits which have been obtained by collective bargaining with the employer.

The Order of Railway Telegraphers is one of the owners of "Labor"; I am not a member of the Board of "Labor" now. Each owner serves as a member of the Board by a system whereby membership is staggered two out of every five years. I have been a member of the Board of "Labor" on several occasions.

"Labor" is a cooperative educational society that was formed in the early 1920's for the specific purpose of getting news to our men with reasonable promptness concerning negotiations on railroads, what was occurring in the labor movement, and national events which it was felt would not materially be reported in other newspapers.

"Labor" consists primarily of labor news. Our organization does not at the present time publish a monthly magazine. I do say that the majority of railroad organizations

[fol. 236] do publish a monthly magazine which deals primarily with what that organization is doing as an organization. Being without a monthly magazine means that the information gets to our members through labor. A number of copies are sent to certain lodges for their distribution.

Special editions of "Labor" are distributed to subscribers in a given state. It is very seldom that an edition is issued for any particular city although that was done for the Congressman who is known as the father of the Railroad Retirement Act and that was the special edition limited to the Cleveland area. The cost of the additional printing of the special edition is limited to making over the first page. It is a four-page newspaper. The other pages are left as in the original copy for that week or the original edition for that week. The only addition is the first page is made over and, of course, by handling it in that manner the cost is held to a minimum. The cost of such editions in 1956 were in the neighborhood of $11,000. That is, $11,000 in the aggregate. The cost of all the editions together came to just about $11,000.

"Labor" has resources which it has invested. We hold a considerable amount of Government Bonds. We have bonds in two or three railroads. We have savings accounts in two or three banks and, prior to 1953, our office building and land had been paid for in full and we had something a little over one-half million dollars invested.

Along about 1954 the property on which our office building was located was confiscated by the Government, which decided they were going to take over the site to erect a third office building for members of the House of Representatives. They paid us for the property, but I don't think they paid us what it was worth.

The newspaper "Labor" has income from its investment [fol. 237] as distinguished from subscribers of $17,000 to $18,000 a year. I would say that up until about 1950 the amount going into certificates of bonds and investments of that kind was constantly increasing but since that time it has remained in status quo or dropped a little because we have tried to hold any increases in the subscription rates to a minimum and we felt that we had acquired the necessary resources to take care of any situation that might arise.

The investments which "Labor" has were acquired prior to 1950. The value of the investments have been fairly constant since 1950. The only item which has fluctuated would be the amount which the Government paid us for our building. Formerly that was an asset in the form of a building and we invested that for a temporary period in some government securities. But, ignoring that item, "Labor" has had a fairly constant income in the neighborhood of $17,000 per year.

I think in 1956 the number of special editions of "Labor" was above the average. That was the year the total cost was $11,000.

As an individual I am a member of the Railway Labor Political League; I am an officer of that organization; I am vice president. I am familiar with the financial operations of that organization.

I am familiar with the Committee on Political Education of the American Federation of Labor. These two organizations make contributions to political campaigns.

Q. From what source do they derive the funds to make such contributions?

Mr. Blakeney: Object.

Court: Overruled.

Mr. Blakeney: I submit the best evidence of that would be the records on that.

Court: Overruled.

Witness: Our study of the Taft-Hartley Act convinced us that neither organization could make any contribution from any union funds for any political candidates and that [fol. 238] if any such contributions were made they would have to be voluntary contributions. The Railway Labor Political League was established as a result of these provisions of the Taft-Hartley Act. The Railway Labor Political League maintains more than one fund. They maintain what we call the free or voluntary fund and the educational fund. In the so-called free fund are deposited the voluntary contributions. Those are the only amounts that are deposited in the so-called free fund and that is the fund from which all political campaign contributions to candidates are made. That is, all contributions to candidates are made

from the free fund. And the only amounts deposited in the free fund are donations voluntarily made by individuals. Look at Plaintiffs' Exhibit #14. If it is an exact reproduction of the report made, each one of these contributions was made from the free fund which consisted of voluntary contributions of officers and members of various organizations, as individual employees. The amounts were donated by individuals from certain towns and locations where they wanted to help out in this work. Every last cent came as a voluntary donation from an individual. There is not any money in that free fund which came as a contribution from a labor organization. None of the money in that free fund came from the Railway Labor Executives' Association.

The Railway Labor Political League gets funds from the Railway Labor Executives' Association for the educational fund, then deposits that fund in the educational fund account. A separate account is maintained for the so-called free fund. It is separate and deposited in a different bank.

Mr. Blakeney: If he is through with that, I move that the answers be stricken, if your Honor please, and renew my motion as to the best evidence, and I would appreciate it if your Honor would hear me a minute on that.

Court: All right.

[fol. 239] Mr. Blakeney: We, of course, made demand for these records. We were answered by Mr. Kramer that he did not have any custody or control over the records, and that therefore could not and would not produce them. Now he puts a man on the witness stand who wants to testify what the records show. I submit, if your Honor please, that we are entitled to the records, they are the best evidence.

Court: Mr. Blakeney, as I remember Mr. Leighty has not testified except to minor items about the contents of any records, he merely said they got no donations from RLEA for the free fund.

Mr. Blakeney: Yes, sir, but he has testified that they got the money that went to the political candidates, they got it from contributions of various individuals. Now the record as to where they got them from and who they got them from would be the best evidence of that very fact. In fact, such records are the only true basis of proof on the

matter. We have asked them and could not get them, and here is a man wants to tell what they say.

Court: Motion denied.

Witness: The Railway Labor Political League consists of individuals who desire to participate in the work of the League. No labor organization is a member. The Railway Labor Executives' Association is not a member. The Railway Labor Political League files reports with the Clerk of the House of Representatives. As far as I know, the Railway Labor Political League complies with all requirements of the law for filing reports. With reference to Plaintiffs' Exhibit #14, which is a report of the Railway Labor Political League to the Clerk of the House of Representatives for the year 1956, the first category in that report shows all the contributions made to the Political League as required by law in excess of $100.00 in the aggregate. That category shows all the contributions during the year from the same person who aggregated $100.00 or more. Item 2, $92,626.77, [fol. 240] represents individual contributions of less than $100.00. From my inspection of the record I know that the vast majority of contributions in this item were contributions of $1.00 from individuals. None of these were contributions from labor organizations but the majority of those who contributed were members of the labor organizations. Some contributions by members occurred after the local lodge had had its meetings and recessed. The matter will be brought up and the individual members who want to contribute will make their contributions. Some are sent in by mail, I would say a majority of it, although I am not positive; but a large amount is sent in by mail.

I am not as well acquainted with the mechanics of finances and operations of the Committee on Political Education of the American Federation of Labor as I am with the Railway Labor Political League, but I am fairly well acquainted with the method by which they operate and to the best of my knowledge and belief it is parallel to that of the Railway Labor Political League. They also have two funds, one of the funds is made up of voluntary contributions of individuals. That is, the so-called free fund. The other is an educational fund, made up from any contributions from any other group.

Q. Do you know whether anything other than these voluntary contributions go into the so-called voluntary or free fund?

Mr. Blakeney: Object, the record is the best evidence. We have asked for them and would like to see them.

Court: Overruled.

Witness: To the best of my knowledge and belief nothing but voluntary contributions go into the voluntary or free fund. I am here speaking of the COPE. COPE has an educational fund. The name is similar to the other fund of the other Railway Labor Political League. In both of these organizations the educational fund is spent for educational purposes.

[fol. 241] For example, we have a drive at elections to register and vote. Insofar as the Railway Labor Political League is concerned, money from our educational fund is spent for educational purposes. At the present time we are accumulating a surplus in that fund which we intend to disseminate in various ways to show that labor is not the culprit that a lot of people would like the public to think, and we are accumulating a fund for that purpose.

Cross examination.

I am a member of the Railway Labor Political League. That organization does not meet over twice a year. Considerable material is handled by mail and committees of the RLPL confer quite frequently by telephone. We are only required it to hold one meeting a year but we generally hold two, at least two. There is an executive finance committee set up that must approve all the contributions made and before any of these contributions are made they have to be cleared by members of that committee. In my capacity as a member of the general board of the AFL-CIO or as a member of the Railway Labor Political League I have occasionally handled money, which money came into these organizations or goes out of them. Insofar as all of these contributions are concerned, each and every one had my personal approval before they were made. I authorized it before it was made and I had to find out in some instances whether there was a sufficient amount of money in the free

fund to make those contributions. With respect to the money that comes in the receipt or the recording of it or depositing of it, it is handled by the Secretary-Treasurer.

The RLPL gets some of its money for the educational fund from the RLEA, that is, the assessments on the various unions who are members of the RLEA. As to whether or not an assessment for expenditures for the RLEA, which is imposed upon each of the member unions comes out of the general fund of that union, that varies depending upon the organization. One of them may take it out of the pro-
[fol. 242] tective fund and another may take it out of the legislative fund depending on the individual organization or what the convention has instructed the officers of the organization to do.

The total amount for any union people is the percentage of the total expenditures the RLEA divided between unions based on a membership in each union of not less than 1,000 and not more than 70,000 members. There is no limitation of amount of assessment nor the frequency of the assessment.

The RLPL receives money for the voluntary fund through the mail from various individuals in a great many instances. Frequently John Jones or Jim Smith just mails it in.

The unions do not collect money and mail it to the RLPL. Individual members of the union may collect money from individuals and send it in but the union itself does not send any money in for the voluntary fund. It does not go through the union account. A separate account is kept by each union. If the money is gotten from John Jones, a union member, which money is destined for RLPL, that money is not necessarily sent through his union to RLPL. None of it is sent through the union. It is sent to an individual who is possibly a deputy treasurer of RLPL who has an account on that basis and his contributions then are forwarded to the RLPL together with the name of the individual making the contribution. One individual is delegated by the RLPL to collect contributions. That person designated by the RLPL may receive contributions through the mail. After a lodge meeting, that individual may discuss the situation. Individuals contribute through other individuals in the lodge but the union is not in any way

involved in it. The man whom the RLPL designates to get the money has an account in which he deposits some money and then writes checks and forwards it to the RLPL. He would be an agent of the RLPL. Definitely he sends the [fol. 243] RLPL an itemization of who he got this money from. He lists who gave it to him and how much each gave.

He gives each person who contributes a membership card or receipt from the RLPL. He keeps a stub showing who he gave the receipt to. Generally he retains that stub for his own record. If the representative of the RLPL did not have his receipt or membership book with him when he received a contribution, he would likely make out the receipt and stub and mail the receipt, but in all instances a record is made from whom it is collected.

You realize what happens at a little terminal or another station on the railroad. You can appreciate how a section foreman sees the agent for the RLPL and an individual gives him a dollar contribution and the agent for the RLPL says, "I have not got my book with me," and the contributor says, "Put my membership in an envelope," and that is probably done. I can visualize many instances where the receipt may not be mailed out at the time, but that is the policy we endeavor to follow. But, irrespective of whether the receipt is mailed the report that the agent for the RLPL makes shows who he got the contribution from and how much.

The individual agent retains the stub and usually has the stub for each contribution. He is the agent of RLPL. We have control over those stubs. I do not know that any agent of the RLPL has ever been requested to send the stub in, but I think they are retained by the agent. In operations of this kind where there are thousands of individuals involved and where there are 1,000 or more agents that are handling these things we have a general policy that is followed but the individual agent does not get any compensation from us and we have no authority to force him to send in any stubs or anything of that kind. That voluntary agent of the RLPL sends in voluntary contributions because we have designated and appointed him as [fol. 244] our agent to receive these contributions. The man may or may not send in the stubs. I would say that it would

be a fair statement that in the office of RLPL we have got some stubs and a whole lot of stubs we have not got. Mr. Kramer did not tell me before I came here that you were demanding those stubs. Mr. Kramer did not tell me anything of that kind. As to whether Mr. Kramer mentioned them to me, this is the first I heard mention of it in connection with this case today. Mr. Kramer may have told me before I came here that you had demanded the records of RLPL. As to whether I told him I would produce them, I am not in charge of the records. The Secretary and Treasurer is in charge of the records. My office with RLPL is Vice-Chairman. I could not tell the Secretary and Treasurer to produce the records. I could not produce them as Vice-Chairman. I would have to check and see who can produce them. I do not know who could produce them, even though I am Vice-Chairman.

I have authorized each expenditure and know the system of receipts.

With respect to the AFL-CIO organization, which is called COPE, I have seen some records. These records are very voluminous. I have not seen the daily records. I have a lot of other things to do. I have seen records of contributions that were made, several pages of them. Now, just exactly the minute details of handling those records, I am not familiar with. I have seen part of the records indicating individual contributions showing the name of the individual and amount. Contributions to COPE are usually made following a union meeting or mailed in. They also issue membership cards in COPE. Now, whether they issue stubs or maintain stubs, I am not familiar with that detail, but I am familiar with the care that they use to see that only voluntary contributions are placed in that fund. I have examined a number or several pages of these records and have heard discussions with respect to a number of [fol. 245] matters and if there were any questions as to whether an amount could go into one fund or the other, it was always resolved in favor of the educational fund.

With reference to the item, "July 17, 1956, Railway Political League contribution, $2,000," the second item from the bottom on the second page of the COPE report, it is correct that that means that COPE, on that day, gave Rail-

way Political League $2,000. That is what that means—what it indicates.

Q. Now look at the report filed by Railway Labor Political League and show me where the Railway Labor Political League has ever acknowledged the receipt of that money.

A. I would assume that it would probably go into the educational fund for some reason.

It is entirely probable that COPE, which is making a political campaign expenditure, gives $2,000 to Railway Labor Political League to go into an educational fund. It is correct that the list that COPE filed with the Clerk of the House of Representatives is no kind of list except a list of money for purely political purposes. That is supposed to be a list of political, it is money that can be spent for that purpose, now if the recipients elect to put it in the educational fund for some reason, or it may be contributed because there might be some question as to what account it should go in, I would say that in all probability they put it in the educational fund.

Q. You mean to say that COPE after collecting money as you say from members, people for political purposes, would take two thousand dollars of that money and turn it over to somebody else to use for purposes other than and different from political purposes?

A. There is no provision that these contributions are definitely going to be used as a contribution to any individual candidate, it can be used for any number of politi- [fol. 246] cal causes, some of which may be educational. You are making assumptions that are not warranted by anything that I said or by the record. Now it may be difficult for you to understand some of these things . . . because I have had some experience with some individual that I can't refer to here but that nevertheless is a fact.

It is correct that I say we have got two different funds, an educational fund and purely a political fund. Of course, we do not take money out of the educational fund and put it in the purely political fund, though we do take money out of the political fund and put it in the educational fund. But the money that is in the voluntary fund is free money; we designate it as free money and it can be used for educational

purposes or for purposes as to which there might be a doubt as to whether it was educational or not.

Q. You have a lot of variations in connection with it?

A. We consult with our attorneys constantly when any of these questions come up so that we can act as nearly as possible completely within all of the laws in connection with contributions for political purposes and contributions to candidates, and I have not seen anything in our records any place to indicate anything to the contrary, and I know of nothing to the contrary.

Q. Well, I am asking you about one right now.

A. I have given you my reply to the question.

It is correct that the money that is in the educational fund we would never put that over into the political fund. I would never put it in the so-called free fund; as to whether that is the political fund, well, you can call it political fund or whatever you want to call it. There is such a fund as political education, there is such a thing as contributions to a political education fund. There are two separate and distinct accounts. With reference to the Plaintiffs' Exhibit [fol. 247] #15 in evidence here, about 30 or 40 pages of payments, political campaign expenditures, presumably that came out of the political fund, based on that report. I can't vouch for that report. Yes, I know that COPE filed a report on purely political expenditures, but I don't know that that is their report.

Q. Well, it has been admitted in evidence as being a report?

A. Well, I said that if that is a correct report, that is what it shows. I am not taking upon myself the burden of proving or saying that is the correct report. I did not present it and it has been admitted as such in evidence.

I could not say whether it is either a correct report or incorrect report. How would I know? You bring me a report here of I don't know how many pages and submit it to me and ask me whether I know that that is a correct report and while I have had nothing to do with the contributions at all, I will be glad to answer one or two specific questions. I have already answered the question, as next to the last entry on the second page showing $2,000 to Railway Labor Political League. I have already answered

the question as to whether that comes out of the Political League fund. Yes, that comes out of the Political League fund. And it went to the Railway Political League. As to whether the Railway Political League does not show it, it is not shown on the report that you handed to me. It is not shown on the report which you handed me as the report of the Railway Labor Political League. Surely that is as much about the political league as I can tell you about.

In 1956 the special editions of the publication "Labor" cost approximately $11,000. The reason I happen to know that is that I was a member of the Board of Directors of "Labor" at that time. That covers the cost of sending out the extra copies of the special editions. The total number that was sent out was something less than a million copies. [fol. 248] That is, about 200,000 more than our usual circulation. The special editions involve a remake of the first page.

The movement which resulted in union shop agreements cost the affiliated labor organizations about half a million dollars. It came out of the general funds of the unions and the periodic dues that employees pay.

The sovereign body of these organizations is the Convention and this convention specifies the manner in which funds of the organization will be secured and the manner in which they will be spent. It is as democratic a process as can be arranged. The money spent on the union shop movement was spent for that purpose upon instructions of our conventions which is composed of delegates elected by the membership of our labor organization by a method similar to that by which our Congress is chosen. If you want to challenge what we have done you are challenging the method of handling our affairs which is also the method that is used in the running of our Government. Just as the Constitution of the United States specifies the manner in which the individual is to be represented in the making of the laws of our country, the Constitution and Bylaws of our labor organization specify the manner in which members are represented in determinations of the labor organization. The Constitution of our labor organization provides equally as great if not greater protection for minorities than is provided by the Constitution of the United States. The

minority always had an opportunity in our labor organization to make its wishes known. We are required under the law to represent the minorities without discrimination. We represent them and have done so for years. We are the only group that is required to furnish service without compensation or pay.

In amending the Railway Labor Act to permit the Union Shop Agreement Congress agreed with us that we were right in our contention that we should not be required to [fol. 249] render this service without compensation. By that I mean that as bargaining agent we are required to represent all employees in the craft or class and not just those who are members of our labor organization. We sought authority to represent all members of the craft or class and not just our members and Congress gave that right. We also sought to require everyone to pay dues to the union.

In securing enactment of a Union Shop Amendment to the Railway Labor Act we specifically provided non-payment of dues would be the only basis upon which an employee could lose his employment. Attention was called to the various horrible examples of what happened when the railroads had their own company unions which required everybody to join and if the company union did not like the way you parted your hair or the color of your tie you were out of luck. If the company union refused to take a person in as a member of the company union for any reason at all, then the employee lost his job. We decided that we did not want to be in that position where we could cause persons to lose their employment. So an employee can violate every rule in our Constitution, but so long as he continues to pay dues he will not lose his employment. If we expel him from the union he no longer has to pay dues but he still cannot lose his job.

Q. Just one question on this line. I still want you to state, if you will, where is the protection in your union, in your Constitution or any of your laws or in any arrangements you now have where it is to protect minority people or minority employees who choose not to pay money to your union?

Mr. Kramer: Your Honor, I was under the impression my objection was sustained on that.

Court: Yes, I sustained it.

Witness: I have never made a computation as to the approximate income of the Railway Labor Unions derived from employees in the form of dues per year. I have never [fol. 250] concerned myself with the financial affairs of any union except our own. I would say, generally speaking, that the amount of money which the unions collect in dues, initiation fees and all other assessments is about 1½% because I know the average individual in the railroad industry in our group today receive approximately $350.00 per month and I know that the maximum dues rates of these organizations is about $5.00 a month. In general, it runs considerably less than that. I was giving you an estimate that was very much on the high side.

The income of Railway Labor Unions from dues they collect from employees annually would not be as much as $100,000,000 a year. I have never seen any figures which show the Railway Clerks Union has an income by itself of over $8,000,000 from the dues of members. Personally, I doubt very much that it is anywhere near that amount. But, if $8,000,000 is correct since the Clerks represent about 25% of the total income of railway employees, that would mean a total income from dues to railway labor organizations of about $32,000,000 for all of them instead of $100,000,000.

I do not have any estimate as to the amount of dues the railway labor organizations collect annually.

After the 40-hour week was instituted there was a slight increase in railway employment. Today railway employment is far less than it was seven or eight or ten years ago but the decline had nothing to do with the result of the wage movements. To the best of my knowledge I do nat know that people have been laid off as a result of the movements.

Railway employees have been laid off steadily since 1928, movement or no movement. The extent of layoffs is much higher in years when we did not have the movement than in years we did have them.

Q. Now, with respect to the movements, do they have any- [fol. 251] thing to do with the fact that the railroads are

now undertaking to get it back on the taxpayers in terms that they are now going to the Government for money?

Mr. Kramer: Your Honor, I renew my objection.
Court: Sustained.

By Mr. Blakeney:

Q. It is a fact that the railroad companies are going to the United States Government for money now, is it?

Objection—overruled—Exception #71.

A. Some of them are.

If it is true that the American Association of Railroads as a whole are going to the United States Government for money I have not heard about it. I appeared before the Smathers Committee.

Redirect examination.

The R.L.E.A., in addition to legislative activities, engages in other matters that affect the employees who are represented by organizations affiliated with it. It handles many matters having to do with line abandonments. There is probably a list of some 32 different things it does.

Prior to the union shop our unions handled grievances for non-members and spent thousands of dollars in doing so.

Evidence Closed.

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[fol. 252] The following Issues Were Tendered To The Court in apt time by the defendants, other than Southern Railway Company, and refused by the Court. Defendants except. (Exception #90.)

IN SUPERIOR COURT OF MECKLENBURG COUNTY

ISSUES TENDERED

Refused—Defendants Except

J. W. P., Jr.

(Exception #90)

1. Would the dues, fees and assessments which any of the plaintiffs would be required to pay, to comply with the condition of employment contained in the contract which is the subject of this action, be used by the defendant Brotherhood of Railway Clerks to carry on any business enterprises for which the said defendant may not lawfully use such dues, fees and assessments, as alleged in the Complaint?

Answer: ——

2. Would the dues, fees and assessments which any of the plaintiffs would be required to pay, to comply with the condition of employment contained in the contract which is the subject of this action, be used by the defendant Brotherhood of Railroad Signalmen to carry on any business enterprises for which the said defendant may not lawfully use such dues, fees and assessments, as alleged in the Complaint?

Answer: ——

3. (a) Would such dues, fees and assessments be used by the defendant Brotherhood of Railway Clerks for the election of candidates whom such plaintiffs oppose or the defeat of candidates whom such plaintiffs favor, as alleged in the Complaint?

Answer: ——

(b) If so, what amount of such dues, fees and assessments would be so used?

Answer: ——

[fol. 253] 4. (a) Would such dues, fees and assessments be used by the defendant Brotherhood of Railroad Signalmen for the election of candidates whom such plaintiffs

oppose or the defeat of candidates whom such plaintiffs favor, as alleged in the Complaint?

Answer: ——

(b) If so, what amount of such dues, fees and assessments would be so used?

Answer: ——

5. (a) Would such dues, fees and assessments be used by the defendant Brotherhood of Railroad Clerks to support legislation which such plaintiffs oppose or oppose legislation which such plaintiffs favor, as alleged in the Complaint, other than legislation germane to collective bargaining or the welfare or working conditions of railway employees?

Answer: ——

(b) If so, what amount of such dues, fees and assessments would be so used?

Answer: ——

6. (a) Would such dues, fees and assessments be used by the defendant Brotherhood of Railroad Signalmen to support legislation which such plaintiffs oppose or oppose legislation which such plaintiffs favor, as alleged in the Complaint, other than legislation germane to collective bargaining or the welfare or working conditions of railway employees?

Answer: ——

(b) If so, what amount of such dues, fees and assessments would be so used?

Answer: ——

7. Would any of the plaintiffs be unlawfully required, under said contract, to conform to regulation and discipline by the defendant Brotherhood of Railway Clerks, as alleged in the Complaint?

Answer: ——

[fol. 254] 8. Would any of the plaintiffs be unlawfully required, under said contract, to conform to regulation and discipline by the defendant Brotherhood of Railroad Signalmen, as alleged in the Complaint?

Answer: ——

To the issues submitted by the Court to the Jury, and each of them, the defendants, other than Southern Railway Company, in apt time object and except. (Exception #91.)

The following prayers for instructions tendered to the Court by defendants, other than Southern Railway Company, in apt time and were refused except with respect to Nos. 1 and 2 under Section III, which were given in substance as indicated.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

PRAYERS FOR INSTRUCTIONS

The defendants, other than Southern Railway Company, through counsel respectfully request the Court to instruct the jury as follows:

I.

The following issues should be answered in the following manner:

Issue No. 1, "No".
Issue No. 2, "No," and you would not answer Issue No. 3.
Issue No. 3, "Yes" (if that issue is to be answered).
Issue No. 4, "No," and you would not answer Issue No. 5.
Issue No. 5, "Yes" (if that issue is to be answered).
Issue No. 6, "Yes".

All refused. Defendants except.
(Exception #92.)

J. W. P.

[fol. 255] II.

In the event the Court refuses to give the above instructions for a directed verdict on any of the issues, then it is requested that as to such issue or issues the Court give an appropriate peremptory instruction as follows:

1. If you find from the evidence the facts to be as all the evidence tends to show, it would be your duty to answer the first issue No.

2. If you find from the evidence the facts to be as all the evidence tends to show, it would be your duty to answer Issue 2: No, and you would not answer Issue #3.

3. If you find from the evidence the facts to be as all the evidence tends to show, it would be your duty to answer Issue 3: Yes (if that issue is to be answered).

4. If you find from the evidence the facts to be as all the evidence tends to show, it would be your duty to answer Issue 4: No, and you would not answer Issue #5.

5. If you find from the evidence the facts to be as all the evidence tends to show, it would be your duty to answer Issue 5: Yes (if that issue is to be answered).

6. If you find from the evidence the facts to be as all the evidence tends to show, it would be your duty to answer the sixth issue Yes.

All refused. Defendants except. (Exception #93.)

J. W. P.

III.

In the event that the Court refuses to give either the requested instructions for a directed verdict or the requested peremptory instructions, as set out above, with [fol. 256] respect to all the issues in this case, then it is requested that the Court instruct the jury in accordance with each of the following paragraphs:

"1. A union shop contract of the type which is involved in this case is a perfectly valid and enforceable contract."

Given in substance.

J. W. P.

"2. The Supreme Court of the United States has decided that contracts of the type involved in this case are perfectly valid and enforceable, and that is the law."

Given in substance.

J. W. P.

"3. The Supreme Court of the United States has decided that contracts of the type involved in this case are perfectly valid and enforceable, notwithstanding the fact that some portion of the dues, fees and assessments paid to the unions may be used for purposes other than collective bargaining, and that is the law applicable to this case."

Refused. Defendants except. (Exception #94.)

J. W. P.

Respectfully submitted,

J. B. Craighill, Attorney for Defendants other than Southern Railway Company.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

CHARGE OF THE COURT

(The union defendants object and except to each portion of the charge indicated below as follows: the portion beginning with the word immediately following the words "(Exception #——, begin)" and ending with the word immediately preceding the words "(end, Exception #——)," with each exception being numbered consecutively.)

The Court charged the Jury as follows:

Ladies and Gentlemen of the Jury, we are trying a case [fol. 257] in which Mrs. Anna Mae Allen and some 15 or more other plaintiffs are seeking to obtain a permanent injunction which would prevent them from having to join a certain union in connection with their employment with the Southern Railway Company. At the outset of the charge, ladies and gentlemen, and because I am sure that a number of you have not served on the jury before, let me take a moment to explain to you the serious responsibility that you as jurors have.

In the first place, ladies and gentlemen, any verdict that you arrive at must be concurred in by all twelve of you, and your findings of the facts. It is for you to de-

termine what the truth of any dispute is. The Court has no authority to express or even intimate any opinion along those lines, and I now instruct you that you will not interpret anything that I may say to you during the course of the charge as any expression or even intimation that you should or should not make any particular finding, or that you should or should not answer any issue in any particular way. I shall attempt to be just as concise and definite as I can. I shall tell you that if you make such certain findings, that this will be your answer to the issue, and if you make certain other findings, then that would be your answer to the issue, but whether you shall make this or that finding is for you to determine.

I shall also, ladies and gentlemen, give you a brief summary of the evidence offered by both the plaintiffs and defendants, and that, as the term I use implies, is a summary and is just what it purports to be. If I were to give you a full and complete narrative of all of the evidence, it would take another four days, and that I shall not do. I shall attempt to give you a brief synopsis of the evidence for the sole purpose of helping you to remember the evidence, not for the purpose of controlling or influencing your findings, and with the instruction that if you remember the evidence differently from the way [fol. 258] I state it, you will use your recollection and not mine. And further, that the fact that I may overlook or fail to refer to any part of the evidence that is offered by one or the other, does not mean that you are not to consider it, but you will consider all the evidence and give it the weight and credit that you think it should have.

Now, with relation to the Court, it is the duty of the Court to give you the law of the case, and as you have already heard me say during the progress of the trial, we are charting rather unknown seas, and I hope when I get through, it will be the last; it will be as far as you are concerned; it may not be as far as the Supreme Court is concerned, but that is for them to determine, and not you or me. You will take the law as given to you by the Court, ladies and gentlemen, and apply it to the facts which you find, and upon the combination of the two your verdict will arise.

Your verdict, ladies and gentlemen, will take the form of answers to certain questions or issues which have been presented for your consideration, and I have had copies of those made for you so that you can follow me as we go along with the charge. I will take those up for you one by one shortly, but before that, ladies and gentlemen, let me give you a summary of where we are, so to speak. We are not dealing with the desirability or non-desirability of any law. Whether one is in favor of the union or against the union, or believes in closed shop or the union shop, or does not, or whether he is in favor of the Taft-Hartley Act, or the Right to Work law, or against them, they have no part in your determination of this case. We are at a point now which has been reached because of this brief summary of the law: for many years, ladies and gentlemen, there has been what is known as a Railway Labor Act, an Act enacted some twenty or more years ago, as I recall, which laid down certain rights and privileges of the railroads and unions dealing it [sic] and the laborers [fol. 259] employed the railroads. (Exception #74, begins) This act, ladies and gentlemen, was amended in 1953 and put in to it a provision that had not theretofore been there, which in effect authorized but did not require the railroads to enter into contracts with the operating unions and non-operating unions, in fact all of their employees, whereby what is known as a union shop could be inserted in the contract, the provision of this amendment in effect being that railroads and the unions could enter into a contract whereby the railroads would require each of its employees after he or she had worked for them sixty days, as I recall the period, to join the appropriate union depending upon the craft or class to which they belonged, and upon their failure to join the union within the required time, that they could no longer work for the railroad. (Exception #74, end.) In the meantime, the Legislature of several states, including North Carolina, passed what had been known as the Right to Work Act, which provided in effect that a person did not have to join a union or belong to a union in order to work for anybody. In other words, it left the choice of the question of mem-

bership in a union to the individual. The right to employment could not be affected by his decision of whether he was or was not against joining the union; that is, he could not be discharged because he did belong, and could not be discharged because he did not belong to a union. Following the enactment of these Right to Work laws, and the amendment to the Railway Labor Act in 1953, a case was tried in the State of Nebraska, in which certain employees of the Union Pacific Railroad sought to avoid membership in the respective unions under the alleged protection of the Nebraska Right to Work law, and that case went to the Supreme Court of the United States. The Supreme Court of the United States held that the Act of Congress relating to matters of this kind had superiority over any state legislation, and in effect said that where there was conflict between state legislation [fol. 260] along these lines and the Federal Acts of Congress, that the Acts of Congress would prevail, and thereupon denied to the plaintiffs in the Nebraska case the injunction they sought to keep themselves from having to join the union. (Exception #75, begin) In that decision, ladies and gentlemen, the Supreme Court of the United States used this language, after stating that the Federal Act should prevail, that "If the exaction of dues is used as a cover for forcing ideological conformity of other actions in contravention of the First Amendment, this judgment will not prejudice the decision in that case." And they said in another section of the opinion that "If assessments are in fact imposed for purposes not germane to collective bargaining, a different problem is presented." Now, upon those two sentences in that decision of the Hanson case in Nebraska, by the Supreme Court of the United States, the plaintiffs seek to avoid membership in the union suit here, (Exception #75, end) and they are alleging that the activities of the union are in some respects not germane to collective bargaining, whereas, (Exception #76, begin) the unions say that their actions are all for the benefit of their members and for employees generally, and that is where we are with this case. (Exception #76, end.)

(Exception #77, begin) Now, in order that you may understand what the term collective bargaining means, it has been defined in a number of cases, and in fact some of the Acts of Congress. In the National Labor Relations Act, it is said, "To bargain collectively is to perform acts of mutual obligation, the employer and the representative of the employees to meet and, at reasonable times and to confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiations of an agreement or any questions arising thereon." And in another case it has been said that "Collective bar- [fol. 261] gaining is a procedure looking towards the making of collective agreement between the employer and the accredited representative of his employees concerning wages, hours and other conditions of employment. Collective bargaining requires that the parties involved deal with each other in an open and fair mind and sincerely endeavor to overcome obstacles or difficulties existing between the employer and the employees to the end that employment relations may be established free of obstruction." (Exception #77, end.)

Now, ladies and gentlemen, with those preliminary observations, the Court now comes to the questions or issues that are presented for your determination, and I will take those up for you one by one. The first one is: did the defendant Unions use dues and fees which they collected from railroad employees in support of or opposition to legislation which is not reasonably necessary or related to collective bargaining?

Now, in the first place, ladies and gentlemen, the burden of proof of that issue is on the plaintiff, Mrs. Allen, and the other plaintiffs who testified in the case to satisfy you by the greater weight of evidence that dues and fees of railroad employees are used in support of, or in opposition to, legislation which is not reasonably necessary or related to collective bargaining.

Now, when I speak of the weight of evidence, ladies and gentlemen, I am not necessarily referring to the number of witnesses, nor the length of the testimony; I am referring, rather, to the quality or convincing power of

the evidence, that is, the evidence which shall weigh more in the scale of your minds, and shall tip it however slightly in favor of the plaintiffs. You start out with the scale of your minds equally balanced. Now, in a criminal case you start with presuming a defendant is innocent, but in a civil case like this there is not any presumption, you [fol. 262] start out with no advantage on either side, and it becomes the duty of the plaintiffs in a case such as this to tip the scales of your minds to some degree, however slight, in his favor if he is to prevail; and if, after weighing all of the evidence, the evidence of the defendants outweigh that of the plaintiffs, of course, he would lose, and if the evidence shall weigh equally in the scale of your minds, and neither side outweighs in quality or convincing power the evidence of the other, then the defendant would still prevail, because, as I say, the plaintiffs, these employees, have the burden of tipping the scales of your minds in their favor to some degree, otherwise they must lose.

Now, let's analyze that issue a little further. Do the defendant Unions use dues and fees which they collect from railroad employees in support of, or opposition to, legislation which is not reasonably necessary or related to collective bargaining? (Exception #78, begin) The question, ladies and gentlemen, is not whether they use dues or fees in support of or in opposition to legislation or to any legislation, but whether or not it is legislation that is not reasonably necessary or related to collective bargaining. (End, Exception #78.)

Now, the unions frankly admit that they support various and sundry legislation, that has to do with their unionization and things of that sort, and that is entirely within their province, they have a right to do it. And if they should do it, it would not constitute a situation which would give any relief to these plaintiffs. They have the burden of showing not only that they support or oppose legislation, but the kind of legislation that is not related to or connected with collective bargaining. Now then, upon that issue, ladies and gentlemen, or rather I think I have made some notes as we have gone along and they, of course,

are not all related to one issue. I think, in order to get that summary before you, I will have to give you the benefit [fol. 263] of those notes at this time, and come back after I have done so and attempt to relate them on each issue. Remember, ladies and gentlemen, that these notes that I am giving you are not intended to control or influence your findings, but are intended solely to help you remember the evidence, and I can't take shorthand and they are not full by any means, and I particularly caution you that you are not to restrict your consideration of the evidence to what I shall refer, but it is your duty to consider all of the evidence even though I should fail to refer to it.

Going now, ladies and gentlemen, to my notes with relation to entire case for both the plaintiffs and the defendants as related to all the issues, the entire and I hope brief summary, the plaintiffs, ladies and gentlemen, introduced as witnesses all insofar as I know of the plaintiffs or parties who have brought this suit. The others that did not actually testify stated that they would testify along the same lines as the others, the import of their testimony being that they had worked for the Southern Railway Company for varying periods of time, some as little as two or three years, and some as much as 30 or 40 years, and that they occupied positions such as signalmen, clerks, file clerks, other clerical work, etc., and that they were opposed to joining a union, that there were certain things about the operation of various unions that they objected to such as any kind of insurance features or death benefits, or in attempting to influence legislation or not support or defeat of political candidates, or contributions to the candidacies of any particular candidate, and that they were opposed to various laws that had been sponsored or encouraged by the defendant Unions such as the Right to Work law and the union shop part of the Railway Labor Act. And from there on, ladies and gentlemen, the evidence offered by plaintiffs was largely the ad- [fol. 264] verse examination of a number of people who had some connection with, not all, with unions or organized labor generally. Under our law, ladies and gentlemen, a party may adversely examine the opposite party, that is,

he may call upon him to answer certain questions although they may be in opposition to his own position, and the plaintiffs have used that machinery and have examined quite a number of persons. I won't take time to call all of their names, but at any rate, they offered evidence upon the adverse examinations, of Mr. G. A. Link, who testified that he was a representative of the Brotherhood of Railway Clerks which had some 300,000 members, and that there was some 6,500 of those on the Southern Railway which have about, some 70 local lodges on its lines.

His evidence tended to show that the BRC, which I will call it from here on for Brotherhood of Railway Clerks, publishes a publication known as the "Railway Clerk" semi-monthly, and another one, the "Bulletin," published monthly, his evidence tending to show that the contract referred to by the plaintiffs in their Complaint, I believe overlooked that in giving you the history of the law of the matter down to this point, was that, following the enactment of the amendment to the Railway Labor Act in 1953, that the Southern Railway then entered into a contract which included, among other things, a union shop agreement, that was in 1953, and that that contract was executed by Mr. Link and by Mr. George Harrison, the Grand President of the BRC, with the Southern Railway, and that, pursuant to that contract, a person employed by the Southern Railway must have been, sixty days after employment, become a member of or contributed to the appropriate union, and in the case of BRC, must pay an initiation fee of $10.00, or if he is a previous member and is being reinstated, a fee of $10.00, and that thereafter, upon the present bylaws, is charged dues of $2.25 a month. That became effective in April, 1953.

[fol. 265] The evidence of plaintiffs tended to show, upon the adverse examination of Mr. Link, that in becoming a member that an employee must sign an application which provides in effect that the member should abide by the policies, etc., further testifying that BRC has a national representative who is a full-time employee, and who is interested in legislative matters, and that the Grand Lodge officer also helps in connection with these, and that they

have representatives in the State Legislatures representing their BRC, and participating in consideration of legislation offered before the various State Legislatures, and that there is a legislative tax that is used to pay the salary and expenses of these legislative representatives.

He testified further, upon the adverse examination, that in the 1955 Boston convention of the BRC, that a resolution was adopted which was to the effect that union shop agreement be put in force, and authorized the Grand President to take necessary action against any member who would interfere with or take action against the adoption of the union shop, or to attempt to break down or undermine the principles thereof.

The plaintiffs also offered the adverse examination of Mr. W. C. Hopper to the effect that he was President of the BRC, and that the dues of the Charlotte lodge were some $2.25 a month, and that the Grand Lodge publishes the "Railway Clerk," pays death benefits to those who have belonged to it for 12 months, and that membership in that is available to those not over 60 years of age. That this local lodge has a legislative representative, that some of the dues are sent away and the rest kept here to pay local expenses, and that this local lodge is affiliated with the AFL-CIO.

Mr. L. J. Smith testified that he handles grievances for the local lodge, and that on cross-examination that the local [fol. 266] lodge takes no action as to candidates or as to contributions to political campaigns.

Mr. S. H. Long, Jr., upon adverse examination, testified that he was Recording Finance Secretary and Treasurer of the local lodge of BRC, and that had 130 members, that of the dues of $2.25 per month that the Grand Lodge gets $1.00 a month, that the System Board gets 50¢, the local lodge gets 65¢, and 10¢ goes to the N.C. Legislative Committee.

Mr. L. J. Long is local representative, that his committee on political education of COPE, as it has been referred to in the trial, makes a financial report in the publication "Railway Clerk" each year, and that it is the official publication of BRC. The Grand Lodge publishes a bulletin and

send it to the officers, that the local lodge here in Charlotte subscribes to *Labor* for all its members, paying, as I recall, all but 20¢ of the annual subscription of 75¢ per year for Labor.

Upon adverse examination, the plaintiffs offered, too, the evidence of Mr. George M. Harrison, who is Grand President of the BRC and has been since 1928. His salary is $60,000 a year. (Exception #79, begin) He testified that the Railway Labor Executives' Association is made up of heads of the railway labor unions, and that it contributes to the Railway Labor Political League, and that they pay tax to the AFL-CIO, his evidence tending to show that for the period from December, 1955, to June 30, 1956,— I have some figures referring to that and other figures of July, 1956, to August, 1957, I referred to the first as 1956 and the other as the 1957 figures, who testified that the BRC paid, and I will leave off the odd dollars and cents, $65,000 for the 1956 period, and $153,000 for the 1957 period; that the Charlotte office expenses were $93,000 for 1956, and $125,000 for 1957; total lodge expenses were $1,729,000 for 1956, and $3,000,000 and some-odd dollars. He also gives the expense of certain radio programs that I [fol. 267] did not get down for the first period, but some $649,000 for the second or 1957 period; that for legislative purposes it spent $92,000 in 1956, and $139,000 in 1957; for International affairs $232,000 in 1956 and $618,000 in 1957; to political education $352,000 in 1956 and $365,000 in 1957; Civil Rights Committee $25,000 for 1956 and $69,000 for 1957, as well as some other figures that I will not take time to read. (End, Exception #79.)

The plaintiffs also adversely examined Mr. Jesse Clark, who testified that he is President of the Signalmen's Union, which has some 16,000 members, and he testified that the Constitution and Bylaws of the Union, testified to the initiation fee of from $5.00 to $20.00 varying according to local lodge and membership dues of $2.00 a month, $1.50 of which goes to the Grand Lodge, and the local lodge has the right to make the fees higher. He testified that a part of the money sent to the Grand Lodge goes to the legislative fund to pay the expenses of the repre-

sentative, etc.; that they publish what is known as the "Signalmen's Journal," and part goes to "Labor," and Mr. Higgenbotham is the North Carolina legislative representative, he is a member of the R.L.E.A., which is Railway Labor Executives Association; that the Signalmen pay assessments to it; that he is also a member of R.L.P.L., Railway Labor Political League, and that the Signalmen pay a per capita tax to AFL-CIO, of which it is a member.

Now that, ladies and gentlemen, is a brief summary of the evidence offered by the plaintiffs in the form of oral testimony except that I have, I believe they offered the evidence of Mr. L. C. Helms to the effect that he was secretary and treasurer of the local BRC, and that he wrote certain letters to some of the plaintiffs requiring them to join the union, and the testimony of Mr. R. P. Powell that he received a letter from the secretary of the union requiring him to pay $192.00 back dues, etc. From then on, [fol. 268] unless I have overlooked something unintentionally, the evidence of the plaintiffs was in the form of exhibits or some form of writing as magazines, papers and things of that sort, one of which was the Constitution and Bylaws of the BRC, and then some 35 special issues of the publication Labor, which were issued in favor of the candidacy of some particular person such as the United States Senator, it would take too long to read all of them, but among those there are special editions for Tennessee favoring the candidacy of Kefauver. In Illinois for Douglas, and Minnesota for Humphries; Massachusetts for Furcolo; Iowa for Gillett; Oregon for Morse; Washington for Magnuson, and a number of others.

And it also offered a copy of Labor for October 27, in which a final list of candidates endorsed by the R.L.P.L. was carried, and another one in which the list of candidates it favored in some nine states, and one in which it endorsed the candidates of some six or seven of the states, and introduced a bulletin which endorsed the candidacy of other members for the Senate and House in North Carolina and other states. And another issue of Bulletin endorsed the candidates for the Senate and House

of North Carolina, and another issue doing the same thing. And a letter from the BRC to Thad Eure, Secretary of State, authorizing Mr. W.J. Burton to be lobbyist for it, and then a publication called Legislative Facts, (Exception #80, begin) and then the report of the AFL-CIO for the year 1957, and calling attention to various parts of that report, among other features of that report being a statement BRC spent for the 1956 period $65,000 as tax to the AFL-CIO, and in 1957, $135,000; that for 1956 the Signalmen paid $4,000, and for 1957 the Signalmen paid $8,000; that for the regional office for the Charlotte region for 1956 was $93,000, and for 1957 was $125,000; headquarters of public relations, radio programs, etc., for 1956, and I assume this is AFL-CIO rather than BRC, $411,000 for 1956, and $649,000 for 1957; publications for [fol. 269] 1956, $401,000, and for 1957, $696,000; for research in 1956, $880,000; for 1957, $143,000; legislative expense in 1956, $92,000, and in 1957, $139,000; International affairs $88,000, and I don't have the figure for the next year. And it showed the expense of COPE for 1956 as $352,000, and for 1957 was $365,000; that the civil rights committee had expenditures of $5,000 for 1956, and $6,000 for 1957. (Exception #80, end.)

Plaintiffs also offered the report of RLPL, showing campaign contributions of varying amounts to various candidates for office in the United States Senate and Congressmen throughout the United States; I will not take the time to go further into that, together with a report of COPE, and thereupon the excerpt of the minutes of the Convention of 1955.

Now, ladies and gentlemen, that is just a brief summary of the evidence offered on behalf of the plaintiffs on all of these various and sundry issues that we have before us.

In reply to that, ladies and gentlemen, the defendants offered the testimony, and in the meantime also examined and elicited information from the various witnesses that had been adversely examined by the plaintiffs, and then offered the testimony of Mr. G. A. Link to the effect that he is the general chairman of the BRC, and the highest official that that organization has on the Southern Rail-

way line. His evidence tended to show that the application card offered by the plaintiffs which had a provision that they agreed to abide by the law, etc., was not now used, and that the application that the plaintiffs in this case would be required to sign if they are required to sign one, has no such requirement, no such pledge, and that all they had to do in order to become members of the respective unions is to pay the back dues and the initiation fees, and that the unions have no authority on, or inclination to see to bind them to any kind of pledge or agreement [fol. 270] to any of their bylaws or objectives. His evidence, ladies and gentlemen, went into some detail as to the amounts that have been procured by the activities of BRC for the benefit of employees of the Southern Railway Company employing the plaintiffs. I did not break these down, ladies and gentlemen, but as I recalled it they offered evidence tending to show that, starting about 1945 or 1946, the BRC conducted negotiations each year or two with the Southern which has resulted in a large increase in the salaries paid to the employees including these plaintiffs, one of the contracts providing for an increase of 16½¢ an hour, another one for some 15¢ an hour, another one for some 30¢ an hour as I recall it, the total amount of those being somewhere between 75¢ and $1.00 an hour. There were so many figures that I could not get them all, as we went through it, but at any rate his evidence tending to show that as a result of the negotiations carried on by the Defendant Unions, that their members, as well as these plaintiffs, provided to the extent of somewhere in the neighborhood of one dollar an hour increase in their salaries, and that in doing so that large amounts of money were spent by the union, that the total spent was in millions of dollars over this period of negotiations.

The defendants also offered the testimony of Mr. G. E. Leighty, testifying that he was President of the Railway Telegraphers and has been since 1946, and that he is Chairman of R.L.E.A., and that it gets funds from assessments to the member unions; testifying that the BRC paid some 11% of the expenses and the Signalmen some 2%; that a special edition of Labor in 1956 cost $11,000.

His evidence tending to show that for a good many years that R.L.E.A. has, or that Labor has, had a large fund of money which it had invested in real estate, stocks, bonds and things of that nature, and it has an income from those of some $17,000 or $18,000 a year; or, in other words, [fol. 271] considerably more than the cost of the special edition of Labor put out in 1956. His evidence further tending to show that he was a Vice-Chairman of R.L.P.L., and that it has two funds, one of which is an educational fund and the other a free or voluntary fund.

His evidence tending to show that it gets no money from RLEA, and that neither—that is for the free fund from RLEA, and that COPE also maintains two funds, the free fund and the educational fund; that it gets no money from RLEA. His evidence tending to show further that the monies that are spent in connection with political campaigns and contributions, etc., by those organizations are not money in anywise derived from dues or fees of the unions which are represented in them, but they are made up of voluntary contributions from individuals, that their reports are filed with the Clerk of the House of Representatives showing that a number of persons gave them contributions of from $5,000 - $2,000, but that even a greater number of employees gave them a contribution of less than $100, and that under the law the person making contributions of less than $100 need not be named, nor the amount shown, which by that, as I recall, the proportion of that is not over about 10% of the contributions they received were more than $100. His evidence tending to show that most of that came from contributions of one dollar apiece or something like that made by individual members of the union as well as other people who were interested in that objective, and which were entirely voluntary, and there was in no sense an assessment or fee or due.

Mr. Leighty also went into detail as to the accomplishments of the various Railway Brotherhoods increasing the income, pay of the employees of the railroads, both operating and non-operating, as well as improved conditions of work; offering testimony tending to show that,

until 1945, I have forgotten the date,—anyhow, in the last few years that some employees of the Southern Rail-[fol. 272] way which were in the categories of these plaintiffs, were working five days—that they now work five days but get six days' pay and 7¢ an hour extra, and that while those that would work seven days previously are now getting equally as much as they work two days less, and still get six days' pay and 7¢ an hour increase in wages.

Now, ladies and gentlemen, in the absence of a request to do so, that is as far as I intend to go with a recapitulation of the evidence, and I again instruct you you are not limited to my statement of the evidence. I want you to consider all whether I referred to it or not, follow your own recollection whether it conflicts with mine.

Now, coming back to this first issue, ladies and gentlemen: did the Defendant Unions use dues which they collected from railway employees in support of or opposition to legislation that is not reasonably necessary or related to collective bargaining? (Exception #81, begin) Without recapitulating again, the evidence offered in that connection, plaintiffs have offered evidence tending to show that the report of the AFL-CIO for the year 1957, reported that through its legislative committee it had supported a number of pieces of legislation in Congress, among other things legislation affecting Hell's Canyon, legislation affecting stream pollution, civil rights, flood insurance, things of that sort, (end, Exception #81) and the plaintiffs take the position that that kind of legislation has no connection with collective bargaining, and that their taxes charged by the unions to railway employees is partially used as a tax for CIO-AFL, and that they are active in opposing legislation of the type referred to in there is paid for out of their dues in part, and that you should thereupon take the position that you should answer that issue in the affirmative, that is, Yes. Whereas, the defendants take the position, ladies and gentlemen, that they have their legis-[fol. 273] lative set-up, that they have to maintain in connection with legislation that affects unions, and that if any effort or expenditures were made along the lines of Hell's Canyon, flood control, and the like, that is so small

that it does not amount to anything and ought not to be considered by you.

(Exception #82, begin) Now, ladies and gentlemen, something has been said in the argument about the small amount of per capita that might be taken from the dues of an individual to do any particular act. The Court instructs you that you have the authority to consider that feature of the case. On the other hand, ladies and gentlemen, that is not necessarily controlling, and the Court instructs you that if you find, and find by the greater weight of evidence, that any appreciable or substantial amount of money, regardless of how much it may cost any one individual, is used by the defendant Unions in support of or in opposition to legislation which is not reasonably necessary or related to collective bargaining, you would answer that issue in favor of the plaintiffs, that is, Yes. (End, Exception #82.) On the other hand, if you, if the plaintiffs have not carried the burden imposed by law and has not tipped the scales in their favor, then you answer that issue in favor of the defendants, that is, No.

The second issue: do the Defendant Unions use dues and fees which they collect from the railway employees to influence candidates' election to public office? There, ladies and gentlemen, without attempting to go further into the evidence, the plaintiffs' position is that you should find that they publish "Labor," that they expend sums of money through their legislative representative that amounts to large sums of money, and that that is for the purpose of influencing the voting and election to public offices, and that you should answer that issue in their favor, whereas, the defendants say that they publish "Labor" as a service, [fol. 274] and copies are disseminated among their members, and that no money came out of the fees or assessments to put out special editions from dues or assessments, but that it came from the income from their investments, and more, too, and that they do not use dues and fees for that purpose, and that you should answer that issue No.

Of course, if you answer that issue No, ladies and gentlemen, you would not have to answer the third issue because it would not be required; but, if you answer that second

issue Yes, then you come to the third issue, which is: If so, is the same necessary or reasonably related to collective bargaining? And there, ladies and gentlemen, the plaintiffs take the position that it is an attempt to influence legislation, or votes in an election to public office, and that it is related to it and not necessary, and you should answer that issue No. (Exception #83, begin) Whereas, the defendants say, ladies and gentlemen, that that is what they are in business for, to influence legislation, (End, Exception #83) and that relates to labor legislation and that is all they have done in any quantity or amount, that is, work for everyone, and that even if you should answer that second issue Yes, you should come along and answer the third issue Yes, also.

The fourth issue is: Did the defendant unions use dues and fees which they collected from railway employees to make contributions to campaigns for candidates for election to public office? There, ladies and gentlemen, the plaintiffs say that you should find that, according to reports made by COPE and RLEA, that they did make contributions running into thousands of dollars for the election of candidates to Congress, and the House and Senate as well as State and local officials, and that you should answer that issue Yes. Whereas, the defendants say that they admit that COPE and RLEA made the contributions, [fol. 275] but say that none of them are represented by any fees or dues collected from the members, that they came from voluntary contributions exclusively, and that they, therefore, do not use dues or fees, and that you should answer that issue in favor of the defendants.

(Exception #84, begin) Now, ladies and gentlemen, in that connection the Court instructs you that, in determining your answer to that first issue, that you may consider the relationship between the union, the CIO-AFL, the RELA, COPE, Railway Labor Executives Committee and those committees on political education, and if, upon consideration of all of the evidence, you find that the dues and fees are so channeled whether direct or indirectly, that the dues and fees of the plaintiffs are used for the purpose of making contributions to the campaigns of candidates for

election to public office, you answer that issue Yes. (End. Exception #84.)

(Exception #85, begin) On the other hand, ladies and gentlemen, while the defendants have no burden in that issue, and are not required to show that they don't make such contributions, if you should find that the contributions they do make are made by COPE and RLEA, or RLPL, (End, Exception #85) are not from dues and fees but come from contributions made by individuals even though they may be made in a union hall at the time of union meetings, if it is not in the form of compulsion and is an entirely voluntary contribution on their part, then, ladies and gentlemen, you would answer that in favor of the defendants, that is, No. If you answer that issue No, you would not have to answer the fifth issue; but, if you answer it Yes, then you would come to the fifth one, which is: If so, does the same necessarily or reasonably relate to collective bargaining?

The plaintiffs take the position that you should find that sums of money in excess of $100,000 were made as [fol. 276] contributions to various candidates, and that the purpose of that was to make them their representatives, in effect, so that they would go ahead and vote for such things as labor legislation, as well as flood control and Hell's Canyon.

(Exception #86, begin) Whereas, the defendants say that they seek to elect persons who are friendly to labor, and they don't take dues and fees to do anything about it, but that what is done is not for purposes other than collective bargaining, and you should answer that issue that they are reasonably necessary, if you should come to that issue.

The Court instructs you, ladies and gentlemen, that if you should find by the greater weight of evidence that they are not reasonably necessary to collective bargaining, your answer to that issue would be in favor of the plaintiffs, that is, No. (End, Exception #86.) If you fail to so find, your answer would be Yes.

The sixth and last issue is: Is the Brotherhood of Railway Clerks' death benefit system necessary or reasonably related to collective bargaining?

Ladies and gentlemen, you have heard the evidence along that line which is to the effect that the BRC has what is called the death benefit provision that pays a year's salary to a member upon his death, and that a certain amount of fees and dues are taken for setting aside for the purpose of that fund, and that that is available to all persons who have been members for twelve months, that it is entirely voluntary, any person can make application to become a member of this death benefit association as he see fit, and the defendants offered evidence tending to show that it is available to all without any discrimination, etc., as long as they have been in it for twelve months. (Exception #87, begin) You have heard the definition [fol. 277] of collective bargaining which the Court has given you. If, upon consideration of that definition of collective bargaining, you find that the death benefit system is reasonably related to it for the benefit of the members, you will answer that issue in favor of—I am approaching that in the wrong way. If the plaintiffs have proved by the greater weight of evidence that it was not reasonably necessary or reasonably related to collective bargaining, then you answer that issue in favor of the plaintiffs, that is, No. (End, Exception #87.) If they have not so satisfied you, you answer it in favor of the defendants, that is, Yes.

Now, ladies and gentlemen, we have spent four days or five days in the trial of this case. The method of trial by jury has been found to be the fairest method that can be devised for the purpose of determining disputes between man and man. We bring together twelve persons of varying ages and experiences and observations, get the benefit of their combined knowledge of justice, we are more likely to get the truth of the matter than any way that we have been able to arrange it. So, ladies and gentlemen, I ask you to test the evidence offered in this case in the light of your knowledge of human nature, your observations of the way people act and conduct themselves under given circumstances, and above all your plain, old common sense, for the purpose of determining the truth of this matter as best you can.

I repeat, ladies and gentlemen, unions are not on trial, union shop is not on trial, the Right to Work law is not

on trial, (Exception #88, begin) not a thing in the world is involved here, ladies and gentlemen, except the issues which have been presented, the main question being: have the unions gone beyond the purposes for which the Railway Labor Act allows them, and to places that are not reasonably necessary or related to collective bargaining? [fol. 278] (End, Exception #88) that is the question you have to determine without regard to sympathy or inclinations you have on behalf of the plaintiffs, or any tendency you may have on behalf of the defendants.

In the final analysis, ladies and gentlemen, the object of any trial is to arrive at the truth, and the truth is the truth whether it hurts or helps any particular person or organization. We ask you, ladies and gentlemen, to let your verdict speak the truth as you honestly and conscientiously see and find it to be.

* * * * * * *

[fol. 283]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

PLAINTIFF'S EXHIBIT NO. 1

AGREEMENT

THIS AGREEMENT made this 27th day of February 1953; by and between Southern Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Harriman and Northeastern Railroad Company, The Alabama Great Southern Railroad Company (including Woodstock and Blockton Railway Company), New Orleans and Northeastern Railroad Company, The New Orleans Terminal Company, Georgia Southern and Florida Railway Company and St. Johns River Terminal Company, respectively (hereinafter referred to as "Carrier"), and [fol. 284] employees of each such company as represented by the Railway Labor Organizations signatory hereto, through the Employees' National Conference Committee, Seventeen Cooperating Railway Labor Organizations,

WITNESSETH:

IT IS AGREED:

Section 1.

In accordance with and subject to the terms and conditions hereinafter set forth, all employees of the Carrier now or hereafter subject to the rules and working conditions agreements between the parties hereto, except as hereafter provided, shall, as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class within sixty (60) calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organization; except that such membership shall not be required of any individual until he has performed compensated service on thirty (30) days within a period of twelve (12) consecutive calendar months. Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreements.

Section 2.

This agreement shall not apply to employees while occupying positions which are excepted from the bulletining and displacement rules of the individual agreements, but this provision shall not include employees who are subordinate to and report to other employees who are covered by this agreement. However, such excepted employees are free to be members of the organization at their option.

[fol. 285] Section 3.

(a) Employees who retain seniority under the Rules and Working Conditions Agreements governing their class or craft and who are regularly assigned or transferred to full-time employment not covered by such agreements, or who, for a period of thirty (30) days or more, are (1) furloughed on account of force reduction, or (2) on leave of absence, or (3) absent on account of ess or disability, will not

be required to maintain membership as provided in Section 1 of this agreement so long as they remain in such other employment, or furloughed or absent as herein provided, but they may do so at their option. Should such employees return to any service covered by the said Rules and Working Conditions Agreements and continue therein thirty (30) calendar days or more, irrespective of the number of days actually worked during that period, they shall, as a condition of their continued employment subject to such agreements, be required to become and remain members of the organization representing their class or craft within thirty-five (35) calendar days from date of their return to such service.

(b) The seniority status and rights of employees furloughed to serve in the Armed Forces or granted leave of absence to engage in studies under an educational aid program sponsored by the federal government or a state government for the benefit of ex-service men shall not be terminated by reason of any of the provisions of this agreement but such employees shall, upon resumption of employment, be considered as new employees for the purposes of applying this agreement.

(c) Employees who retain seniority under the rules and working conditions agreements governing their class or craft and who, for reasons other than those specified in subsections (a) and (b) of this Section 3, are not in ser- [fol. 286] vice covered by such agreements, or leave such service, will not be required to maintain membership as provided in Section 1 of this agreement so long as they are not in service covered by such agreements, but they may do so at their option. Should such employees return to any service covered by the said rules and working conditions agreements they shall, as a condition of their continued employment, be required, from the date of return to such service, to become and remain members in the organization representing their class or craft.

(d) Employees who retain seniority under the rules and working conditions agreements of their class or craft, who are members of an organization signatory hereto repre-

senting that class or craft and who in accordance with the rules and working conditions agreement of that class or craft temporarily perform work in another class of service shall not be required to be members of another organization party hereto whose agreement covers the other class of service until the date the employees hold regularly assigned positions within the scope of the agreement covering such other class of service.

Section 4.

Nothing in this agreement shall require an employee to become or remain a member of the organization if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this agreement, dues, fees, and assessments, shall be deemed to be "uniformly required" if they are required of all employees in [fol. 287] the same status at the same time in the same organizational unit.

Section 5.

(a) Each employee covered by the provisions of this agreement shall be considered by the carrier to have met the requirements of the agreement unless and until such carrier is advised to the contrary in writing by the organization. The organization will notify the carrier in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employee who it is alleged has failed to comply with the terms of this agreement and who the organization therefore claims is not entitled to continue in employment subject to the Rules and Working Conditions Agreement. The form of notice to be used shall be agreed upon by the carrier and the organizations involved and the form shall make provision for specifying the reasons for the allegation of non-compli-

ance. Upon receipt of such notice, the carrier will, within ten (10) calendar days of such receipt, so notify the employee concerned in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employee shall be given the organization. An employee so notified who disputes the fact that he has failed to comply with the terms of this agreement, shall within a period of ten (10) calendar days from the date of receipt of such notice, request the carrier in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request the carrier shall set a date for hearing which shall be held within ten (10) calendar days of the date of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employee in writing with copy to the organization, by Registered Mail, Return Receipt Requested, or [fol. 288] by personal delivery evidenced by receipt. A representative of the organization shall attend and participate in the hearing. The receipt by the carrier of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the carrier is rendered.

In the event the employee concerned does not request a hearing as provided herein, the carrier shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreement not later than thirty (30) calendar days from receipt of the above described notice from the organization, unless the carrier and the organization agree otherwise in writing.

(b) The carrier shall determine on the basis of the evidence produced at the hearing whether or not the employee has complied with the terms of this agreement and shall render a decision within twenty (20) calendar days from the date that the hearing is closed, and the employee and organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

If the decision is that the employee has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agree-

ment shall be terminated within twenty (20) calendar days of the date of said decision except as hereinafter provided or unless the carrier and the organization agree otherwise in writing.

If the decision is not satisfactory to the employee or to the organization it may be appealed in writing, by Registered Mail, Return Receipt Requested, directly to the highest officer of the carrier designated to handle appeals under [fol. 289] this agreement. Such appeals must be received by such officer within ten (10) calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The carrier shall promptly notify the other party in writing of any such appeal, by Registered Mail, Return Receipt requested. The decision on such appeal shall be rendered within twenty (20) calendar days of the date the notice of appeal is received, and the employee and the organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

If the decision on such appeal is that the employee has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty (20) calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the carrier and the organization agree otherwise in writing. The decision on appeal shall be final and binding unless within ten (10) calendar days from the date of the decision the organization or the employee involved requests the selection of a neutral person to decide the dispute as provided in Section 5 (c) below. Any request for selection of a neutral person as provided in Section 5 (c) below shall operate to stay action on the termination of seniority and employment until not more than ten (10) calendar days from the date decision is rendered by the neutral person.

(c) If within ten (10) calendar days after the date of a decision on appeal by the highest officer of the carrier designated to handle appeals under this agreement the organization or the employee involved requests such high-

est officer in writing by Registered Mail, Return Receipt Requested, that a neutral be appointed to decide the dis-
[fol. 290] pute, a neutral person to act as sole arbifrator to decide the dispute shall be selected by the highest officer of the carrier designated to handle appeals under this agreement or his designated representative, the Chief Executive of the organization or his designated representative, and the employee involved or his representative. If they are unable to agree upon the selection of a neutral person any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The carrier, the organization and the employee involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty (30) calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The carrier, the employee, and the organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested. If the position of the employee is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the carrier and the organization; if the employee's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the carrier, the organization and the employee.

(d) The time periods specified in this Section 5 may be extended in individual cases by written agreement between the carrier and the organization.

(e) Provisions of investigation and discipline rules contained in the Rules and Working Conditions Agreement between the carrier and the organization will not apply to cases arising under this agreement.

(f) The General Chairman of the organization shall notify the carrier in writing of the title(s) and address(es)
[fol. 291] of its representatives who are authorized to serve and receive the notices described in this agreement. The carrier shall notify the General Chairman of the organization in writing of the title(s) and address(es) of its repre-

sentatives who are authorized to receive and serve the notices described in this agreement.

(g) In computing the time periods specified in this agreement, the date on which a notice is received or decision rendered shall not be counted.

Section 6.

Other provisions of this agreement to the contrary notwithstanding, the carrier shall not be required to terminate the employment of an employee until such time as a qualified replacement is available. The carrier may not, however, retain such employee in service under the provisions of this Section 6 for a period in excess of sixty (60) calendar days from the date of the last decision rendered under the provisions of Section 5, or ninety (90) calendar days from date of receipt of notice from the organization in cases where the employee does not request a hearing. The employee whose employment is extended under the provisions of this Section 6 shall not, during such extension, retain or acquire any seniority rights. The position will be advertised as vacant under the bulletining rules of the respective agreements but the employee may remain on the position he held at the time of the last decision, or at the date of receipt of notice where no hearing is requested pending the assignment of the successful applicant, unless displaced or unless the position is abolished. The above periods may be extended by agreement between the carrier and the organization involved.

Section 7.

An employee whose seniority and employment under the [fol. 292] Rules and Working Conditions Agreement is terminated pursuant to the provisions of this agreement or whose employment is extended under Section 6 shall have no time or money claims by reason thereof.

If the final determination under Section 5 of this agreement is that an employee's seniority and employment in a craft or class shall be terminated, no liability against the carrier in favor of the organization or other employees

based upon an alleged violation, misapplication or non-compliance with any part of this agreement shall arise or accrue during the period up to the expiration of the sixty (60) or ninety (90) day periods specified in Section 6, or while such determination may be stayed by a court, or while a discharged employee may be restored to service pursuant to judicial determination. During such periods, no provision of any other agreement between the parties hereto shall be used as the basis for a grievance or time or money claim by or on behalf of any employee against the carrier predicated upon any action taken by the carrier in applying or complying with this agreement or upon the alleged violation, misapplication or non-compliance with any provision of this agreement. If the final determination under Section 5 of this agreement is that an employee's employment and seniority shall not be terminated, his continuance in service shall give rise to no liability against the carrier in favor of the organization or other employees based upon an alleged violation, misapplication or noncompliance with any part of this agreement.

Section 8.

In the event that seniority and employment under the Rules and Working Conditions Agreement is terminated by the carrier under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforce-[fol. 293] able, the organization shall indemnify and save harmless the carrier against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; Provided, however, that this Section 8 shall not apply to any case in which the carrier involved is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case such carrier acts in collusion with any employee; Provided, further, that the aforementioned liability shall not extend to the expense to the carrier in defending suits by employees whose seniority and employment are terminated by the carrier under the provisions of this agreement.

Section 9.

An employee whose employment is terminated as a result of noncompliance with the provisions of this agreement shall be regarded as having terminated his employee relationship for vacation purposes.

Section 10.

(a) The Carrier party to this agreement shall periodically deduct from the wages of employees subject to this agreement periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in such Organization, and shall pay the amount so deducted to such officer of the Organization as the Organization shall designate; Provided, however, that the requirements of this subsection (a) shall not be effective with respect to any individual employee until he shall have furnished the Carrier with a written assignment to the Organization of such membership dues, initiation fees and assessments, which assignment shall be revocable in writing after the expiration of one year or upon the termination of this agreement whichever occurs sooner.

[fol. 294] (b) The provisions of subsection (a) of this Section shall not become effective unless and until the Carrier and the Organization shall, as a result of further negotiations pursuant to the recommendations of Emergency Board No. 98, agree upon the terms and conditions under which such provisions shall be applied; such agreement to include, but not to be restricted to, the means of making said deductions, the amounts to be deducted, the form, procurement and filing of authorization certificates, the frequency of deductions, the priority of said deductions with other deductions now or hereafter authorized, the payment and distributions of amounts withheld and any other matters pertinent thereto.

Section 11.

This agreement shall become effective on April 15, 1953, and is in full and final settlement of notices served upon

the carriers by the organizations, signatory hereto, on or about February 5, 1951. It shall be construed as a separate agreement by and on behalf of each carrier party hereto and those employees represented by each organization on each of said carriers as heretofore stated. This agreement shall remain in effect until modified or changed in accordance with the provisions of the Railway Labor Act, as amended.

Signed at Washington, D. C. this 27th day of February 1953.

[fol. 301]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

PLAINTIFFS' EXHIBIT NO. 11

W. J. Burton, Jr., Chairman
818 Third Street
Spencer, N. C.

H. H. Shull, Vice Chairman
P. O. Box 2112
Winston-Salem, N. C.

B. S. Brown, Member
47 Barnard Ave.
Asheville, N. C.

J. F. Hodges, Secy. Treas.
P. O. Box 1783
Raleigh, N. C.

R. K. Dennis, Sr.
226 Earl Street
Rocky Mount, N. C.

LEGISLATIVE
N. C.
COMMITTEE

NORTH CAROLINA STATE
LEGISLATIVE COMMITTEE

of the

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES (Affiliated with American Federation of Labor):

[fol. 302]

Raleigh, N. C.
August 21, 1957

Mr. Thad Eure
Secty. of State
State of North Carolina
Raleigh, N. C.

Dear Sir:

With reference to your letter of August 15th to Mr. W. J. Burton, Jr., 818 3rd St., Spencer, N. C. with reference to written authorization from our organization to act as lobbyist during the 1957 General Assembly.

Will you kindly accept this letter as authority from our organization, the North Carolina State Legislative Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that he was authorized to appear and lobby for us during the 1957 General Assembly for our interests and labor in general.

Yours very truly,

(s) J. F. HODGES,
Secty. Treas.

FILED
AUG 22 1957
THAD EURE
SECRETARY OF STATE

[fol. 335]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

PLAINTIFFS' EXHIBIT 17

Excerpts From

PROCEEDINGS of the 20th REGULAR AND SIXTH QUADRENNIAL CONVENTION

of the

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

Held at BOSTON, MASS., Mechanics Hall
Tuesday, May 10, 1955

[fol. 336] Delegate Peterson: Resolution No. 218, The Union Shop.

"Whereas, our 1951 San Francisco Convention by the adoption of Resolution No. 257 established the following policy:

"'Resolved, That we go on record as endorsing wholeheartedly the principle of the Union Shop and call upon all Grand Lodge Officers, our Boards of Adjustment and all other affected subordinate units of the Brotherhood to fully cooperate and assist in the vigorous prosecution of our requests for the adoption of Union Shop and check-off agreements on each and every carrier in the United States with which we have contracts; and be it further

"'Resolved, That the Grand President be, and hereby is authorized to take such disciplinary action as he may deem necessary and appropriate toward any member of the Brotherhood who has interfered or may interfere with our program for the adoption of the Union Shop and check-off or who attempts to break down or undermine the principles thereof.'

"Whereas, Union Shop Agreements have been adopted by most of the railroads and other companies with which we hold collective bargaining agreements; and

"Whereas, certain carriers and other companies have refused and continue to refuse to enter into Union Shop Agreements; Therefore, be it

"Resolved, That we reaffirm the policy established in Resolution No. 257, adopted by the 1951 Convention, and continue our efforts until we have secured Union Shop Agreements with every carrier and company with which our Brotherhood holds collective bargaining agreements."

MR. CHAIRMAN, I move the adoption of the Committee's report.

[fol. 337] DELEGATE GIBBONS: I second the motion.

CHAIRMAN GOBLE: The Committee approves and the motion is to adopt. Are you ready to vote? Those in favor signify by the usual voting sign. Down Hands. Those opposed. It is adopted. (pp. 207-208)

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[fol. 338]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

PLAINTIFFS' EXHIBIT 20

ADDRESS-SECRETARY,
LOCAL NO. .....
R. L. Heilig
274 Peliso Avenue
Orange, Virginia

ADDRESS-GENERAL CHAIRMAN,
BRS OF A.
E. C. Melton, General Chmn.
1704 Second Ave., West
Birmingham 8, Ala.
Ph. 6-7325

April 12, 1957

SPECIAL & FINAL NOTICE

SIGNAL EMPLOYEES SUBJECT TO THE PROVISIONS OF THE UNION SHOP AGREEMENT OF 1953

Mr. R. P. Powell

DEAR SIR:

I am now in receipt of information listing signal employes, from the Secretary of BRS of A., Local No. 110 showing you and those who have not, up to this date, complied with his notice of February 23, 1957, and the Union Shop Agreement in remitting the full amount of dues, Fees, and Assessments, on or before the date specified, which is required according to our records to put you in good standing with the Brotherhood through the first quarter of 1957, or to April 1, 1957.

Under the provisions of the Union Shop Agreement, now in effect and is inforcable (as signed in 1953) you must comply with those provisions without further notice, and maintain your membership in good standing with the Organization representing your class and craft, by paying Dues, Fees, and Assessments "Uniformly Required" of all employes in the same status and at the same time in the Organizational Unit. If for any "legitimate" reason you decline membership available to you, as is applicable to other employes, you are still required to tender (pay) all dues, fees, and assessments required of others in order to comply with the Union Shop Agreement.

We are now giving you a further opportunity by this "FINAL and CERTIFIED NOTICE" and "TIME PERIOD" to pay [fol. 339] what our records show that you owe in order to comply with the Brotherhood Constitution, By-Laws, and Union Shop Agreement.

You are also advised that beginning April 1, 1957, (within that 30-day period) the Second quarter Dues, under the Brotherhood Constitution, is due and must be paid not later than 60 days from due date in order to comply with the Union Shop Agreement. You must not exceed the 60-day time limit in paying each quarter's dues, fees, and assessments, beginning with January 1, and April 1, and July 1, and October 1, of each year so long as you are covered, working, and not off-duty for such period, or within 30, but not more than 35 days, from date you return

to service, or within 60 days from date of employment whichever is later, as so provided in the agreement.

In the event you (or anyone else) should dispute our records and the amount shown in this notice; due to you making some payment, not working, or you have Brotherhood cards or receipts for which you have not been given credit, we will be glad for you to furnish such evidence and the matter will be given proper consideration to see if an error has been made. However, we suggest that you send in the amount shown in this notice and if it is found that the payment is not correct the adjustment can be made later, with a refund if one is due, or a further notice if more is due.

We urge you to comply with this notice as we have no authority from Grand Lodge to extend the stated time period or grant part payments or installments. Therefore, the full amount must be paid not later than APRIL 22, 1957, or I will have no other recourse than to notify the Management that you have failed to comply with the Union Shop Agreement. Of course, after that is done, we cannot recognize payment or any excuse until the matter is handled by the Management in accordance with provisions of the Union Shop Agreement, in which case we will be governed [fol. 340] by the evidence in each of such cases and the final decision, if such action is necessary.

Beginning April 1, 1957, the Second quarter Dues of $10.00 will also be due and must be paid within that 30-day period, but not later than 60 days from that date, and dues will be $10.00 for each quarter thereafter until further notice.

Our records and the Seniority Rosters show that you was in service of the Railroad in the Signal Department prior to the day of , 19 , or on that date and have not become a member of the Organization representing your class and craft, and you now owe $..... in Dues, Fees, and Assessments in order for you to become a member and put you in good standing through the First quarter of 1957, or to April 1, 1957, or,

Our records reflect that your last dues were paid prior, if any, to the 1st quarter of 1950, and you now owe $192.00 in Dues, Fees, and Assessments to put you in good standing with the Brotherhood through the First quarter of 1957, or April 1, 1957.

I am attaching Application Form and Copy of Union Shop Agreement for ready reference and use of those involved, and the form can be filled out as indicated by the check marks, then signed and returned to me or the Secretary, in order that we may know if you desire to become a member of the Organization, which is available to all members, and in accordance with the provisions of the Union Shop Agreement. If for any reason you have, prior to receipt of this notice, paid your Dues, Fees, and Assessments in full, you can advise me at once and then disregard the notice, if proper payment has been made.

We do not wish to embarrass anyone or cause any unnecessary trouble that can be avoided, and I trust you will [fol. 341] send me, or the Secretary, the full amount due, (if this has not been done) not later than APRIL 22, 1957, in order that no further action will be required in this matter, if the proper payment is received within the stated period. We are sorry and regret that this Notice is necessary, but trust you understand our position and realize we have our instructions and obligations.

Thanks for cooperation and early response, I remain,

Very Fraternally yours,

E. C. Melton
General Chairman, BRS of A.

* * * * * * *

[fol. 343]

IN SUPERIOR COURT OF MECKLENBURG COUNTY

UNION DEFENDANTS' EXHIBIT #1

MEMBERSHIP APPLICATION

ATTENTION, SECRETARIES: This application must invariably be sent to the Grand Secretary-Treasurer with the Additions to Membership Report (Form M.R. 1) immediately applicant is accepted and initiated into membership.

Fee Paid ..... Date ....., 19.....

I hereby apply for membership in the

BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES

[fol. 344]

Name in full .....
(To be typed or printed)

Male or Female ..... Occupation .....
(Give Payroll Classification)

Company employed by .....

Have you previously held membership in the Brotherhood? .....

If so give Number of Lodge .....

Signature of Applicant .....
(In Applicant's Own Handwriting)

Street No.
City ..... State .....
(Zone)

Date of Birth .....
(Month, Day, Year)

Recommended by .....

APPLICATION FOR DEATH BENEFIT

Subject to the provisions and exceptions stipulated in the Constitution of the Grand Lodge and the Rules and

Regulations of the Department, as they exist or may be amended, membership in the Death Benefit Department is available to members of the Brotherhood under 60 years of age, upon the designation of a proper beneficiary and the filing of the following application: (APPLICANTS 60 YEARS OF AGE AND OVER ARE INELIGIBLE FOR MEMBERSHIP IN THE DEATH BENEFIT DEPARTMENT AND SHOULD NOT FILL OUT THE FOLLOWING APPLICATION.)

Name of Beneficiary .....
(Give Full First Name and Not Initials)
(See Instructions on Reverse Side)

Address of Beneficiary: .....

..... Relationship .....

APPLICANT'S RECEIPT

....., 19.....

[fol. 345]

Received of $..... in payment of fee for membership in the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

This sum will be deposited with the Financial Secretary of the lodge to which submitted to be held intact until the applicant has been duly elected to membership in said lodge, or shall be returned in full to said applicant.

.....
Signature of Member Taking Application

(Over)

INSTRUCTIONS

Some person or persons must be designated as beneficiary on each application for membership in the Death Benefit Department. The designation of beneficiary is limited to the member's wife, husband, children, or other relation by blood, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, step-children, children of legal adoption; or to a person or persons dependent upon

the member. In case there are no such persons, the Local Lodge in which the member holds membership may be named beneficiary and specific instructions given as to the disposition of the benefit.

The death benefit is payable only on condition that the member's dues in the Brotherhood are paid up at the time of death in accordance with the terms of the Grand Lodge Constitution and Laws and the by-laws of his Local Lodge.

No benefit is payable unless the member has completed twelve (12) consecutive months' membership dating from, and including date of his acceptance into membership by the Grand Lodge.

[fol. 370]

NORTH CAROLINA SUPREME COURT

Spring Term 1959

No. 237—Mecklenburg

ANNE MAE ALLEN, MILLICENT C. BAILEY, DOROTHY IRENE BALL, C. ELIZABETH BROWN, MARJORIE L. BROWN, WILLIE MAE BROWN, D. L. BRYANT, MARY CALLAHAM, SHIRLEY CARRIKER, EDWARD D. CASEY, E. L. CLOANINGER, JR., W. H. DAVIS, ROY T. ELLIS, JR., E. JUNE JOY, H. L. JUSTICE, R. F. KISTLER, PEGGY MCCRANIE, E. E. QUEEN, REBECCA SCHOLL, KATHERINE K. SNAVELY, DOLORES SHEETS, LEE L. STICKLEY, ROBERT R. TATUM, MIRIAM P. THOMPSON, AILEEN E. WARNER and KATHRYN C. WEISNER, for themselves and in behalf of all other employees of the Southern Railway Company having a common interest in the subject matter of this action, Plaintiffs,

and BICKETT BASS, MARY B. CROSBY, GEORGE D. ATWELL, HAROLD B. HACKNEY, CELESTIA S. SMITH, CRAVEN SMITH, R. P. POWELL, H. L. NUSSMAN, J. B. NUSSMAN, SR., JOHN W. JORDAN, and L. J. BYRUM, Additional Plaintiffs,

v.

SOUTHERN RAILWAY COMPANY, INTERNATIONAL ASSOCIATION OF MACHINISTS, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, INTERNATIONAL BROTHERHOOD OF BLACKSMITH, DROP FORGERS AND HELPERS, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, THE ORDER OF RAILROAD TELEGRAPHERS, BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AMERICAN TRAIN DISPATCHERS ASSOCIATION, RAILROAD YARDMASTERS OF AMERICA and RA..W EMPLOYEES' DEPARTMENT OF THE AMERICAN FED..ATION OF LABOR, Defendants.

FIRST OPINION—February 25, 1959

[fol. 371] Appeal by Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and Brotherhood of Railway Signalmen of America, from Pless, J., and a jury, April 21, 1958, Regular Schedule "B" Civil Term, of Mecklenburg, docketed and argued as No. 251 at Fall Term, 1958.

The original plaintiffs instituted this action June 8, 1953, against Southern Railway Company, hereafter called Southern, and sixteen railroad labor organizations, hereafter called defendant Unions. After amendment to complaint, referred to below, eleven other individuals, as permitted by court order, became additional parties plaintiff.

Plaintiffs, non-operating employees of Southern, are not members of, and are unwilling to join, any of defendant Unions.

Plaintiffs alleged that, pursuant to provisions of a contract between Southern and defendant Unions, defendants notified them they would be discharged from their jobs if they did not, by June 15, 1953, join one of defendant Unions and pay to it "fees, dues and assessments"; that the provisions of said contract were "unconscionable and wrongful, contrary to the Constitution, the common law and the Statutes of the State of North Carolina and violative of the rights of the plaintiffs thereunder"; and plaintiffs prayed that defendants be restrained from their threatened enforcement thereof.

On June 8, 1953, on plaintiffs' *ex parte* application, a temporary restraining order was issued; and on June 17, 1953, after hearing, said restraining order was continued in full force and effect until the trial and final determination of the cause.

Thereafter, separate answers were filed (1) by defendant Unions and (2) by Southern. Defendants admitted their execution of a contract dated February 27, 1953, between Southern and other railroad corporations, referred [fol. 372] to therein as "Carrier," and defendant Unions, which provided, *inter alia*, that "all employees of the Carrier . . . shall, as a condition of their continued employ-

ment . . . become members of the organization party to this agreement representing their craft or class within sixty (60) calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organization."

Defendant Unions asserted the validity of said contract, their right to enforcement thereof, and prayed that the restraining order be dissolved.

Southern prayed that the court "grant its declaratory judgment as to the validity of the Union Shop Agreement . . . and . . . declare the respective rights, status and other legal relations of the parties . . . " Southern is not a party to this appeal.

On February 1, 1957, (after the Hudson and Hanson decisions, referred to in the opinion,) plaintiffs, as permitted by court order, filed an amendment to their complaint, in which they alleged, *inter alia*, that the periodic dues, initiation fees and assessments which defendant Unions collect from their members and which, unless protected by the court plaintiffs would be required to pay in order to retain their jobs with Southern, had been, were and would be regularly and continually used by defendant Unions for the following purposes: (1) to carry on and finance insurance businesses, banking businesses and sundry other business enterprises which plaintiffs were not willing to finance or support; and (2) to carry on, finance and pay for political activities directly at cross purposes with the free will and choice of plaintiffs, including the election of candidates for public and governmental offices whom plaintiffs oppose and the defeat of other political candidates whom plaintiffs [fol. 373] support and the enactment of legislation which plaintiffs oppose and the defeat of other legislation which plaintiffs support. Plaintiffs alleged that such use of their money by defendant Unions would not be germane to collective bargaining and that to compel plaintiffs against their will to pay money to defendant Unions for such purposes would deprive them of their rights under the First, Fifth and Ninth Amendments to the Constitution of the United States.

Thereupon, defendant Unions demurred to the complaint, as amended, on the ground that it did not state facts sufficient to constitute a cause of action. After hearing, the court overruled said demurrer; and, based on the facts alleged in said amendment to complaint, entered a new restraining order which remained in effect until the trial at April, 1958, Term.

Upon trial Judge Pless, at the close of plaintiffs' evidence, entered judgment of nonsuit, dismissing the action as to all defendants except Southern and two of defendant Unions, to wit, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, hereafter called Brotherhood of Railway Clerks, and Brotherhood of Railway Signalmen of America, hereafter called Brotherhood of Railway Signalmen.

Thirteen plaintiffs testified. By reason of their craft or class, twelve were eligible for membership in the Brotherhood of Railway Clerks and one was eligible for membership in the Brotherhood of Railway Signalmen. Two of the original plaintiffs were no longer employees of Southern. One of the additional plaintiffs, having become a supervisor, was no longer subject to the union shop agreement. There was no evidence as to the employment or craft status of the other twenty-one plaintiffs.

The gist of plaintiffs' testimony was as follows: (1) They were unwilling to join the union; (2) they opposed (compulsory) membership as a condition for retention of their [fol. 374] jobs; and (3) they opposed the use by the union of any of their money (a) for the support or defeat of political candidates and (b) for the support or defeat of legislation.

Three plaintiffs (all who were questioned with reference thereto) testified to their opposition to the use by defendant Unions of any of their money to support or finance an insurance or death benefit program.

None of the plaintiffs testified concerning the use the unions had made and were making of money collected as periodic dues, initiation fees and assessments, from their members. Relevant thereto, plaintiffs offered depositions of officials of the Brotherhood of Railway Clerks and the Brotherhood of Railway Signalmen, adversely examined prior to trial, and documentary evidence.

Motions for judgment of involuntary nonsuit, made, at the close of plaintiffs' evidence and again at the close of all the evidence, by the Brotherhood of Railway Clerks and by the Brotherhood of Railway Signalmen, were overruled.

Six issues were submitted to the jury. The jury found that defendant Unions used "dues and fees" (1) in support of or in opposition to legislation, (2) to influence votes in elections to public office, and (3) to make contributions to the campaigns of candidates for election to public office; and that these uses, and the use of a portion of the "dues and fees" in connection with the death benefit system of the Brotherhood of Railway Clerks, were not reasonably necessary or related to collective bargaining.

Upon the verdict, the following judgment was entered:

"Now, Therefore, it Is Ordered, Adjudged and Decreed that the defendants, and each of them, are hereby restrained and enjoined from placing any compulsion of any nature upon the plaintiffs, individually named as such in the caption of this case, in the course of their employment with the Defendant Railway Company, whereby they, the said plaintiffs, against their free will and choice would be required to join the Defendant Unions, or conform to any rules or disciplines of Defendant Unions, or pay money to said Unions, to wit, the Brotherhood of Railway and Steam-[fol. 375] ship Clerks, Freight Handlers, Express and Station Employees, and the Brotherhood of Railway Signalmen of America.

"This Order, however, is subject to the following conditions:

"The Defendant Unions shall be permitted, upon proper notice, to present proof to the Court, not conflicting or inconsistent with the findings of the jury as hereinbefore recited, as to what portion of the periodic dues, initiation fees and assessments, which they desire to collect from the plaintiffs, will be reasonably necessary and related to collective bargaining between the defendant Unions and the plaintiffs' employer, the Defendant Railway Company, and upon making of such proof, not conflicting or inconsistent with the findings of the jury as hereinabove recited, to the

satisfaction of the Court, this Order shall have no application or force or effect with respect to such portion of such periodic dues, initiation fees or assessments or the imposition and collection thereof under the terms of the contract referred to in the pleadings.

"The cause is therefore retained for such further hearings, either with or without a jury, and such further Orders as may seem appropriate should the proof referred to above be offered by the defendants.

"It Is Further Ordered that the Defendants pay the costs of this action."

The Brotherhood of Railway Clerks and the Brotherhood of Railway Signalmen excepted and appealed. When used in the opinion, "defendant Unions" refers only to the two appellants.

Blakeney & Alexander for plaintiffs, appellees.

Schoene & Kramer and J. B. Craighill for defendant Unions, appellants.

Bobbitt, J. Decision depends upon whether the evidence, considered in the light most favorable to plaintiffs, was sufficient to withstand the motion by defendant Unions for judgment of involuntary nonsuit.

Upon adoption of the Railway Labor Act, 20 May, 1926, 44 Stat. 577, Congress "made a fresh start toward the peaceful settlement of labor disputes affecting railroads." Virginia Ry. Co. v. System Federation No. 40, 300 U.S. 515, 57 S. Ct. 592, 81 L. ed. 789. This Act, as amended, is now codified as 45 USCA §§ 151 et seq. The basic principle un- [fol. 376] derlying this Act is embodied in these provisions: "Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter." 45 USCA § 152, Fourth. In the case cited, the Supreme Court of the United States sustained the constitutionality of the Railway Labor Act, both as to the commerce clause and as to the Fifth Amendment, in relation to the requirement that the carrier treat exclusively with the employees' duly chosen bargaining representative.

Defendant Unions, duly chosen as such by the majority, are the exclusive bargaining representatives of *all* employees of the respective crafts or classes to which plaintiffs belong. Under the collective bargaining agreements between defendant Unions and Southern, plaintiffs acquire and have the same rights in respect of seniority, rates of pay, rules, working conditions, etc., under their employment by Southern, as Southern's employees who become and are members of defendant Unions by their free choice.

The validity of the Union shop agreement of February 27, 1953, depends solely upon the authority granted by the Union Shop Amendment to the Railway Labor Act. Act of Congress, January 10, 1951, 64 Stat. 1238, 45 USCA § 152, Eleventh, hereafter called Union Shop Amendment. The agreement contains provisions expressly authorized by the Union Shop Amendment.

Absent the Union Shop Amendment, the union shop agreement would be void under the North Carolina "Right to Work" Act, Session Laws of 1947, Ch. 328, GS 95-78 et seq.

In Hudson v. R.R., 242 NC 650, 89 SE 2d 441, *certiorari* denied, 351 U.S. 949, 100 L. ed. 1473, 76 S. Ct. 844, the action was to restrain the carrier and the unions *from entering into* a proposed union shop agreement as per-
[fol. 377] mitted, but not required, by the Union Shop Amendment. Plaintiffs therein based their case primarily upon the North Carolina "Right to Work" Act. The constitutional questions now raised were not presented.

In Hudson, it was noted that the North Carolina "Right to Work" Act superseded the common law rule approved by this Court in S. v. Van Pelt, 136 NC 633, 49 SE 177, 68 L.R.A. 760, 1 Ann. Cas. 495. The North Carolina "Right to Work" Act was recognized as valid and in full force and effect "except to the extent Congress, in enacting labor legislation related to interstate commerce, has pre-empted the field"; and that the Union Shop Amendment, which relates only to labor relations between carriers and their employees, was in conflict with and superseded the North Carolina "Right to Work" Act. Reference to the opinion will disclose the several questions then considered and discussed.

Prior to Hudson, the Supreme Court of Nebraska decided Hanson v. Union Pacific Railroad Co., 160 Neb. 669, 71 NW 2d 526, an action to restrain the carrier and the unions from *putting into effect* provisions of union shop agreements containing provisions expressly authorized by the Union Shop Amendment.

For reasons fully set forth by Justice Wenke, the Supreme Court of Nebraska held that the enforcement of contract provisions authorized by the Union Shop Amendment would deprive plaintiffs of specific constitutional rights, to wit: (1) ". . . the freedom of association, the freedom to join or not to join in association with others for whatever purposes such association is lawfully organized, . . ." guaranteed by the First Amendment; and (2) due process of law, guaranteed by the Fifth Amendment, in that, by requiring an employee who does not desire to join a union to pay initiation fees, dues and assessments, such employee "is required to pay for many things besides the cost of col- [fol. 378] lective bargaining," that is, "all of the varied objects and undertakings in which such labor organizations are or may become engaged." The opinion states: ". . . it is apparent that some of these labor organizations advocate political ideas, support political candidates, and advance national economic concepts which may or may not be of an employee's choice."

In Hudson, we expressly reserved the constitutional questions decided by the Supreme Court of Nebraska.

In Railway Employes' Dept. A. F. L. v. Hanson, 351 U.S. 225, 100 L. ed. 1112, 76 S. Ct. 714, the United States Supreme Court reversed the Nebraska decision. Plaintiffs, citing Looper v. Georgia, Southern & Florida Railway Co., 213 Ga. 279, 99 SE 2d 101, contend the questions now presented were not decided but reserved. Defendant Unions contend the identical questions were considered and decided. If the contention of defendant Unions is correct, the decision of the United States Supreme Court, referred to hereafter as Hanson, controls.

Mr. Justice Douglas, referring to the decision of the Supreme Court of Nebraska, said: "It held that the union shop agreement violates the First Amendment in that it deprives the employees of their freedom of association and

violates the Fifth Amendment in that it requires the members to pay for many things besides the cost of collective bargaining. The Nebraska Supreme Court, therefore, held that there is no valid federal law to supersede the 'right to work' provision of the Nebraska Constitution."

Before considering further what was decided in Hanson, an analysis of plaintiffs' action seems appropriate.

Plaintiffs have made no tender of dues, initiation fees or assessments. The Hudson and Hanson decisions determined adversely to plaintiffs the cause of action originally alleged. See Allen v. Southern Ry. Co., 114 F. Supp. 72. All original defendants were restrained by interlocutory orders until February 1, 1957, on the basis of facts orig- [fol. 379] inally alleged. Allegations that enforcement of the union shop agreement would deprive them of constitutional rights guaranteed by the First, Fifth and Ninth Amendments were first made in amendment to complaint filed February 1, 1957; and on the basis of these new allegations all original defendants were restrained by interlocutory order until the trial at April Term, 1958.

Whatever the legal relationship between plaintiffs, a minority of the employees of their respective crafts or classes, and defendant Unions, their duly chosen collective bargaining representatives, such relationship is involuntary on the part of plaintiffs. They do not want defendant Unions to represent them. They do not want to become members of defendant Unions. They do not want to pay any amount as dues, initiation fees or assessments. Finally, if required to pay any amount, they insist that no part thereof shall be used, directly or indirectly, except for purposes reasonably necessary or related to collective bargaining. In short, they are completely at cross-purposes with defendant Unions.

Plaintiffs' cause of action, under amended complaint, proceeds on the premise that if plaintiffs can show that defendant Unions use *any* portion of the dues, initiation fees or assessments, directly or indirectly, for *any* purpose not reasonably necessary and related to collective bargaining, the enforcement of the union shop agreement should be restrained until such time as defendant Unions establish precisely *what* portion of the dues, etc., is used solely for

purposes reasonably necessary and related to collective bargaining. The trial proceeded, issues were submitted and judgment entered in accordance with plaintiffs' said premise.

The judgment, based on the jury's findings, restrained the enforcement of the union shop agreement until such time as defendant Unions establish "what portion of the periodic dues, initiation fees and assessments, which they desire to collect from the plaintiffs, will be reasonably [fol. 380] necessary and related to collective bargaining between the defendant Unions and the plaintiffs' employer, . . ." At the contemplated further hearing, the determination of what expenditures by defendant Unions are reasonably necessary or related to collective bargaining is not limited to expenditures for uses challenged in the amended complaint.

It is noted that the judgment is determinative only as between named plaintiffs and defendant Unions. If persons hereafter employed by Southern should seek similar relief, their status must be determined in subsequent actions.

Considering the testimony and documents in the light most favorable to plaintiffs, there was evidence tending to establish the facts narrated below.

The Brotherhood of Railway Clerks has in excess of 300,000 members in the United States and Canada. Its organizational structure consists of the Grand Lodge, system boards of adjustment and local lodges. The initiation fee, applicable to members of the Charlotte Local Lodge, is $10.00, of which $5.00 is paid to the Grand Lodge; and the dues are $2.25 per month, of which $1.00 per month is paid to the Grand Lodge.

The Brotherhood of Railway Clerks has a North Carolina Legislative Committee composed of a representative from each (North Carolina) local lodge. This committee selects a legislative representative. A local lodge, out of the portion of monthly dues retained by it, pays 10¢ per month per member to this Legislative Committee. The function and responsibility of the legislative representative is to keep in touch with all North Carolina legislation

affecting the interests of the Brotherhood and of its members.

The Grand Lodge of the Brotherhood of Railway Clerks has a full time representative in Washington who observes legislative proceedings of particular interest to the Brotherhood and its members, such as legislation relating to [fol. 381] railroad retirement, railroad unemployment insurance, railroad labor relations, and contacts members of Congress with reference thereto.

The Brotherhood of Railway Clerks publishes semi-monthly and distributes to each member an official publication known as "The Railway Clerk." It also publishes monthly "The Grand President's Bulletin" which is distributed to Brotherhood officials. If and when a local lodge or system board of adjustment wishes to subscribe to "Labor," a weekly newspaper referred to below, the Grand Lodge contributes 20¢ towards the costs of each subscription.

The Brotherhood of Railway Signalmen has approximately 16,000 members. Its organizational structure consists of the Grand Lodge, system general committees and local lodges. The initiation fee is $5.00, of which $1.50 is paid to the Grand Lodge; and the dues are $3.33 per month, of which $1.50 per month is paid to the Grand Lodge.

The Grand Lodge of the Brotherhood of Railway Signalmen sets aside a legislative fund from which it pays legislative representatives in the several states.

The Grand Lodge of the Brotherhood of Railway Signalmen publishes monthly and distributes to its members a publication known as "The Signalmen's Journal." Subscriptions to "Labor" are entered on an individual or subordinate lodge basis. The Grand Lodge contributes no part of the subscription price.

Each of the defendant Unions is one of several owners of the society which publishes "Labor." Presently, this society's revenue consists solely of subscriptions and income from investments. In 1956 and 1957, George M. Harrison, Grand President of the Brotherhood of Railway Clerks, served on its board of directors. In special editions of "Labor" published in 1954 and 1956, distributed in areas where political campaigns were in progress, this newspaper

advocated by name and opposed by name the particular [fol. 382] candidates involved. Generally, this newspaper expresses its views as to candidates and as to legislation.

There is a voluntary group, composed of the heads of several railway labor unions, known as the Railway Labor Executives Association. This group meets ten or twelve times a year "for the purpose of advancing the mutual organizational interests, in handling common problems dealing with collective bargaining and such matters as that." Each of defendant Unions contributes thereto from its Grand Lodge funds. Occasionally, the Railway Labor Executive Association makes contributions to Railway Labor's Political League, referred to below.

Railway Labor's Political League is an unincorporated group composed of the chief executive officers of most of the railway labor unions. It maintains an office in Washington, D. C., staffed by its secretary and one clerical employee. "Generally, the function of it is to carry on political educational work and to collect voluntary contributions from railway employees and other citizens to assist in electing candidates that favor the same general objectives that railroad employees desire to see accomplished in the Federal Congress." Railway Labor's Political League makes contributions to support the campaigns of particular candidates and to influence legislation. This particular group was formed after the 1947 Amendment to the Corrupt Practices Act.

Each of defendant Unions is a member of the American Federation of Labor, Congress of Industrial Organizations Federation, hereafter called AFL-CIO. Harrison is a member of its executive council and of the governing board of its committee on political education known as C.O.P.E. AFL-CIO is a voluntary, unincorporated association, composed of "about 138 national and international Unions." "There are roughly 12½ million members, maybe 13 million, in the Unions that are affiliated with AFL-CIO." Each [fol. 383] of defendant Unions pays substantial sums from its Grand Lodge funds to the AFL-CIO. In each instance, the amount so paid is the aggregate of a per capita tax of so much per member as determined by the AFL-CIO Convention. On this basis, the amounts so paid by the

Brotherhood of Railway Clerks are quite large. AFL-CIO expends its funds to promote various projects and causes in which it is interested.

The Grand Lodge of the Brotherhood of Railway Clerks, out of its portion ($5.00) of each initiation fee, allocates 90¢ to its Death Benefit Department Fund; and out of its portion ($1.00) of the monthly dues, allocates 30¢ per month to its Death Benefit Department Fund. The Constitution of the Grand Lodge of the Brotherhood of Railway Clerks (Article 27), which is a part of the record herein and was a part of the record before the Supreme Court of the United States in Hanson, so provides. Thus, in respect of the portion of dues and fees allocated to the Death Benefit Department Fund, the facts established herein are the identical facts established in Hanson.

Referring again to the Constitution of the Grand Lodge of the Brotherhood of Railway Clerks, part of the record in Hanson, Article 23 thereof deals generally with the subject of "Legislation," and specifically (Section 1) with the appointment of "National Legislative Counsel," and (Section 3) with the formation of "State or Provincial Legislative Committees." Section 2 provides: "The Grand President in consultation with the Grand Executive Council, in absence of Convention action, shall determine the policy of the Brotherhood with respect to Federal Legislation." Section 8 provides: "The State or Provincial Legislative Board shall elect a State or Provincial Legislative Chairman. The Legislative Chairman shall, when authorized by the Legislative Board, devote such time as may be necessary at the State or Provincial Legislatures when same are in session. He shall peruse all bills, memorials [fol. 384] and resolutions introduced in the legislature and oppose all legislation detrimental to the welfare of the Brotherhood; he shall have introduced and support such bills and resolutions as advances the welfare of the members of the Brotherhood, subject to the policy of the Brotherhood as designated by the Grand President, and when such policy has been agreed upon, and approved by the Grand President it shall become the State or Provincial legislative program."

The record before the Supreme Court of the United States in Hanson includes portions of the constitutions of several other unions which were defendants therein, which contain similar provisions.

The appellees in Hanson, in their brief, appear to have drawn into sharp focus the matters now pressed by plaintiffs. Referring to money collected by the defendant Unions as initiation fees and dues, they asserted: "They spend it for political purposes . . . They spend it to pay for the publication of special editions of 'Labor' to help elect or defeat candidates for the United States Senate, to pay for television programs to help elect Democrats to Congress or to state offices, to pay the salaries and expenses of lobbyists, . . ." Again: "They spend it for life insurance, disability, death or funeral benefits for their members, which the involuntary member may not want or which he may prefer to take out with a company of his own selection."

What the Supreme Court of the United States decided in Hanson, and the import of the language in the opinion of Mr. Justice Douglas, must be considered in the light of the record before it and the contentions presented.

In closing the opinion, Mr. Justice Douglas said:

"It is argued that compulsory membership will used to impair freedom of expression. But that problem is not presented by this record. Congress endeavored to safeguard against that possibility by making explicit that no conditions of membership may be imposed except as respects [fol. 385] 'periodic dues, initiation fees, and assessments.' (If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case.) For we pass narrowly on §2, Eleventh of the Railway Labor Act. We only hold that the requirement for financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments. We express no opinion on the use of other conditions to secure or maintain membership in

a labor organization operating under a union or closed shop agreement."

Earlier in the opinion, Mr. Justice Douglas, while recognizing its power to do so, emphasized that it was for Congress to determine whether authority for union shop agreements should be granted. Thereafter, Mr. Justice Douglas said:

"To require, rather than to induce, the beneficiaries of trade unionism to contribute to its costs may not be the wisest course. But Congress might well believe that it would help insure the right to work in and along the arteries of interstate commerce. No more has been attempted here. The only conditions to union membership authorized by §2, Eleventh of the Railway Labor Act are the payment of 'periodic dues, initiation fees, and assessments.' The assessments that may be lawfully imposed do not include 'fines and penalties.' (The financial support required relates, therefore, to the work of the union in the realm of collective bargaining.) No more precise allocation of union overhead to individual members seems to us to be necessary. The prohibition of 'fines and penalties' precludes the imposition of financial burdens for disciplinary purposes. (If 'assessments' are in fact imposed for [fol. 386] purposes not germane to collective bargaining, a different problem would be presented.)"

In the above quotations, we have indicated by parentheses the words relied upon by plaintiffs to support the contention that the Supreme Court of the United States did not pass upon the questions now raised. Whatever our views, if the questions now raised were originally for our decision, we are of opinion and hold that the very questions now raised by plaintiffs were before the Court and decided in Hanson; and that the words upon which plaintiffs rely, when read in context, do not support their contention.

In the first quotation, the requirement upheld is "for financial support of the collective-bargaining agency by all who receive the benefits of its work . . ." We do not think this language conveys the idea that the financial support required is limited to such expenditures as the collective bargaining agency incurs while engaged in the nego-

tiation and servicing of collective bargaining agreements. Rather, it indicates that the required financial support embraces all activities of the collective bargaining agency reasonably related to its maintenance as an effective bargaining representative. If our interpretation is correct, it would seem that, in the discharge of its obligations, the collective bargaining agency would be expected to keep in touch with and make known its findings in respect of legislation tending to promote or to impair its collective bargaining position or tending to enhance or defeat the interests of those whom it represents. In so doing, they would do neither more nor less than the representatives of carriers with whom they negotiate collective bargaining agreements.

This sentence appears in the second quotation: "No more precise allocation of union overhead to individual members seems to us to be necessary." We cannot dispel the impression that the meaning of this sentence is that the requirement that unwilling members pay ordinary periodic [fol. 387] dues and initiation fees for the support of their collective bargaining agency is a reasonable requirement and that no more precise allocation need be made. In this connection, it is noted that whatever small portion of the periodic dues and initiation fees might be traced, under the accounting practices of defendant Unions, to the uses challenged by plaintiffs, the evidence shows that the Brotherhood of Railway Clerks not only owns an office building but receives over $300,000.00 per year as income from investments. Obviously, no benefit would accrue to plaintiffs if, by a mere change in accounting practices, the income received solely from investments, rather than any portion of the periodic dues and initiation fees, were expended for uses now challenged by plaintiffs.

There is no evidence that plaintiffs will be required to pay "assessments." The jury's findings refer to "dues and fees," not to "assessments." Defendant Unions, for some years, have made no assessments on their members. They make no demand on plaintiffs for the payment of any assessment. Whether plaintiffs would be required to pay an assessment as a condition of continued employment is not presented by this record. If and when either of defendant

Unions should undertake to impose an assessment, plaintiffs' liability therefor would have to be determined in the light of all facts concerning such assessment.

As we interpret Hanson, the Supreme Court of the United States has decided that a requirement that plaintiffs pay the ordinary periodic dues and initiation fees uniformly required of all members does not violate either the First or the Fifth Amendment. Since the constitutionality of the Union Shop Amendment has been expressly upheld, we need not discuss plaintiffs' general attack thereon predicated on the Ninth Amendment.

All that defendant Unions demand of plaintiffs is that they pay the ordinary periodic dues and initiation fees [fol. 388] uniformly required of all members. In all other respects, plaintiffs are free to speak and to act according to their own desires even if by so doing they speak and act at cross-purposes with defendant Unions.

As we interpret it, the questions reserved in Hanson would arise only if and when defendant Unions should undertake to deny membership or to terminate membership on account of some failure of plaintiffs to comply with the various regulations applicable to voluntary members, e.g., refusal to sign application blanks, failure to attend meetings, failure to speak or act in harmony with the policies and objectives of defendant Unions, failure to pay an exaction imposed by way of penalty or for disciplinary purposes, etc. If defendant Unions, notwithstanding the tender by plaintiffs of ordinary periodic dues and initiation fees, refuse to recognize plaintiffs as members or deny to them any privilege to which a member is entitled, it would seem that by such conduct they would relieve plaintiffs from further obligations under the union shop agreement. It is quite possible that occasions will arise where defendant Unions will prefer to forego the collection of periodic dues and initiation fees rather than have *nonconformists* as members of their organizations.

It is noted that plaintiffs do not allege or contend that defendant Unions made unlawful expenditures in violation of the federal Corrupt Practices Act, USCA, Title 18, §610; U.S. v. International Union, 352 U.S. 567, 1 L. ed. 2d 563, 77 S. Ct. 529, and cases cited. Nor do plaintiffs allege or

contend that any expenditure made by defendant Unions was otherwise than in accordance with the wishes and will of the majority of their members.

As indicated, our decision is based upon our interpretation of what the Supreme Court of the United States decided in Hanson. Whether our interpretation or that made in the Looper case, supra, is correct, will be resolved in due course.

[fol. 389] Pennsylvania R. Co. v. Rychlik, 352 U.S. 480, 1 L. ed. 2d 480, 77 S. Ct. 421, decided subsequent to Hanson, is predicated upon the validity of the Union Shop Amendment. However, it relates to a union shop agreement involving *operating* employees; and, since the questions decided were quite different from those presented in Hanson and herein, no discussion of the cited case is appropriate.

This action appears to be an incident in the continuing controversy between those who advocate the principles embodied in the Union Shop Amendment and those who advocate the principles embodied in state "Right to Work" statutes and constitutional provisions. It is plain that the Union Shop Amendment constitutes plaintiffs' basic grievance, not the inconsequential sums they are required to contribute to the support of their collective bargaining representative. Southern's answer herein discloses that it shares the views expressed and pressed by plaintiffs. Suffice to say, we express no opinion as to the merits or demerits of the policy embodied in the Union Shop Amendment.

Under the evidence presented, we conclude that plaintiffs were not entitled to the injunctive relief demanded and that the court erred in overruling the motion by defendant Unions for judgment of involuntary nonsuit.

Reversed.

ALLEN v. R. R.

PARKER, J., dissenting. The first five issues submitted to the jury, and their answers thereto are as follows:

"1. Do the defendant Unions use dues and fees which they collect from railroad employees in support of or opposition to legislation which is not reasonably necessary or related to collective bargaining?

Answer: YES

"2. Do the defendant Unions use dues and fees which they collect from railroad employees to influence votes in elections to public office?

Answer: YES

[fol. 390] "3. If so, is the same necessary or reasonably related to collective bargaining?

Answer: No

"4. Do the defendant Unions use dues and fees which they collect from railroad employees to make contributions to the campaigns of candidates for election to public office?

Answer: YES

"5. If so, is the same necessary or reasonably related to collective bargaining?

Answer: No."

As I read the record, there was sufficient evidence produced by the plaintiffs to carry the case to the jury, and to permit them to answer the issues as they did. According to the jury verdict there is no question but that the defendant unions use dues and fees which they collect from their members to support or to oppose legislation not related to collective bargaining, to influence votes in election to public office, and to make contributions to the campaigns of candidates for election to public office. And according to the provisions of a contract between the Southern Railway Company and the defendant unions, an employee of the Southern Railway Company must join the defendant unions and pay the dues and fees demanded, or be discharged.

The fundamental issue is, can the defendant unions in a free United States, whose supreme national law is set forth in the United States Constitution, force an employee of the Southern Railway to join their unions, and compel him financially to support and contribute to a political party and candidates, whose principles, projects, policies or programs he does not believe in, or may abhor, and does not want, and to contribute to support or oppose legislation not related to collective bargaining regardless of his views, or be discharged from his employment?

The specific and narrow question before us is the use made of the dues and fees demanded by the defendant unions which plaintiffs must pay or be discharged. I take my stand not upon the so called "right to work" statute of North Carolina, but upon the United States Constitution. [fol. 391] Freedom of association, of thought and of speech is protected by the First Amendment to the United States Constitution against any action by Congress. American Communications Asso. v. Douds, 339 U.S. 382, 94 L. Ed. 925; Lincoln Fed. L. U. v. Northwestern I. & M. Co., 335 U. S. 525, 93 L. Ed. 212, 6 A. L. R. 2d 473; Thomas v. Collins, 323 U.S. 516, 89 L. Ed. 430.

The right to work is protected by the Fifth Amendment to the United States Constitution. "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure." Truax v. Raich, 239 U. S. 33, 60 L. Ed. 131. "It is said that the right to work, which the Court has frequently included in the concept of 'liberty' within the meaning of the Due Process Clauses (citing authority) may not be denied by Congress." Railway Employes' Dept. A. F. L. v. Hanson, 351 U.S. 225, 100 L. Ed 1112.

The Fifth Amendment, which relates to governmental action, federal in character, not to action by private persons, provides that no person shall be deprived of his property without due process of law. Corrigan v. Buckley, 271 U.S. 323, 70 L. Ed. 969. In my opinion, it is not within the concept of due process to compel a person to contribute dues and fees from his earnings for the purpose of promoting political and ideological ends to which he is opposed and of electing men to public office whose purposes he may distrust, and if he does not so contribute to discharge him from his job with loss of seniority. To hold that this can be done would be a taking of a portion of a person's earnings without due process of law.

In Railway Employes' Dept. A. F. L. v. Hanson, *supra*, the validity of a closed shop contract executed under Section 2, Eleventh of the Railway Labor Act, as amended [fol. 392] (64 Stat. 1238) was upheld. However, the Court

used this language: "If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case." The question reserved is the very question presented here for decision.

In my opinion, no Act of Congress, no governmental action, federal in character, can compel a person to contribute dues and fees from his earnings to a labor union for the ends found by the jury's verdict, so long as the First and Fifth Amendments to the United States Constitution remain a part thereof guarding him from such an unwarranted invasion of his personal and property rights. I am fortified in my opinion by the fact that the Supreme Court of Georgia in Looper v. Georgia, Southern & Florida Railway Co., 213 Ga. 279, 99 S. E. 2d 101, which was decided 10 June 1957, more than a year after the decision in the Hanson case, has expressed a similar opinion on substantially similar facts averred in a petition, stating that the question was expressly reserved in the Hanson case. If a member of a labor union desires to make a *voluntary contribution* for such purposes, he is free to do so.

If a political party dominant in the Congress should enact a statute requiring every federal employee to join a union, and compelling each one to contribute from his salary dues and fees to support the ideas, purposes and candidates of that party, and if he did not pay such dues and fees, he should be discharged from his employment, can there be any doubt that the exaction of such dues and fees for such support would be held unconstitutional? A holding to the contrary would destroy constitutional government in this nation.

I vote to uphold the verdict and judgment of the trial court.

[fol. 393]

JUDGMENT

SUPREME COURT OF NORTH CAROLINA

Spring Term 1959

No. 237—Mecklenburg

ANNA MAE ALLEN, MILLICENT C. BAILEY, DOROTHY IRENE BALL, C. ELIZABETH BROWN, MARJORIE L. BROWN, WILLIE MAE BROWN, D. L. BRYANT, MARY CALLAHAM, SHIRLEY CARRIKER, EDWARD D. CASEY, E. L. CLOANINGER, JR., W. H. DAVIS, ROY T. ELLIS, JR., E. JUNE JOY, H. L. JUSTICE, R. F. KISTLER, PEGGY MCCRANIE, E. E. QUEEN, REBECCA SCHOLL, KATHERINE K. SNAVELY, DOLORES SHEETS, LEE L. STICKLEY, ROBERT R. TATUM, MIRIAM P. THOMPSON, AILEEN E. WARNER and KATHRYN C. WEISNER, for themselves and in behalf of all other employees of the Southern Railway Company having a common interest in the subject matter of this action, Plaintiffs,

and BICKETT BASS, MARY B. CROSBY, GEORGE D. ATWELL, HAROLD B. HACKNEY, CELESTIA S. SMITH, CRAVEN SMITH, R. P. POWELL, H. L. NUSSMAN, J. B. NUSSMAN, SR., JOHN W. JORDAN, and L. J. BYRUM, Additional Plaintiffs,

v.

SOUTHERN RAILWAY COMPANY, INTERNATIONAL ASSOCIATION OF MACHINISTS, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, THE ORDER OF RAILROAD TELEGRAPHERS, BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AMERICAN TRAIN DISPATCHERS ASSOCIATION, RAILROAD YARDMASTERS OF AMERICA and RAILWAY EMPLOYEES' DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, Defendants.

FIRST JUDGMENT

This cause came on to be argued upon the transcript of the record from the Superior Court of Mecklenburg County: Upon consideration whereof, this Court is of opinion that there is error in the record and proceedings of said Superior Court.

[fol. 394] It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable William H. Bobbitt, Justice, be certified to the said Superior Court, to the intent that the judgment is reversed.

And it is considered and adjudged further that the plaintiffs and surety to the prosecution bond, L. W. Pleasant, do pay the costs of the appeal in this Court incurred, to wit, the sum of One Hundred Thirty-three and No/100 ($133.00) Dollars, and execution issue therefor.

[fol. 396]

TWENTY SIXTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Same Title

PETITION TO REHEAR—Filed April 3, 1959

By the majority opinion in the present case, this court has become the first and only court in the land to hold specifically that employees can be required to pay money to partisan political purposes—to influence votes in public elections, to procure the enactment of certain legislation and the defeat of other legislation, to elect certain candidates to public office and to defeat other candidates—that to all of such purposes they can be compelled to contribute, against their will and contrary to their wishes, or else give up their jobs.

The plaintiffs earnestly petition the Court to reconsider this fundamental and far-reaching decision.

It is not a matter of argument as to whether the plaintiffs will be forced to pay a part of their earnings to such purposes in order to hold their employment. After a careful and thorough trial, the jury—composed incidentally, as the record in the trial Court shows, of men and women, white and colored, union and non-union members—found [fol. 397] as a fact that money is collected from employees

in North Carolina by the defendant unions and is used by the unions for the political purposes named above, and the defendants admit that it is not a matter of free choice with employees as to whether they will make such payments for such purposes, but that they must do so as a compulsory condition of holding their jobs and, unless they do so, they will be discharged from their jobs.

The majority opinion does not question that the evidence in the record fully supports and sustains this verdict on the part of the jury.

Nor does the majority opinion question that the compulsion here at issue is accomplished by an affirmative act or intervention on the part of the United States Congress, and is therefore invalid if it exceeds the limitations and barriers set up with respect to Federal action in the United States Constitution. In Railway Employees' Department, A.F.L. v. Hanson, 351 US 225, the United States Supreme Court expressly recognized this.[1]

In the Hanson case, however, the United States Supreme Court ruled that the nature and extent of the compulsion there shown to have been imposed did not offend against Federal constitutional limitations. In the present case, the majority opinion rests Squarely and Solely upon the proposition that the nature and extent of the compulsion here [fol. 398] shown is the Same as was shown in the Hanson case and that therefore the ruling of the United States Supreme Court in the Hanson case controls the present case. Says the majority opinion:

> "Plaintiffs . . . contend the questions now presented were not decided but reserved. Defendant unions contend the identical questions were considered and decided. If the contention of defendant unions is correct, the decision of the United States Supreme Court, referred to hereafter as Hanson, controls."
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> • • • • • • •

[1] The propositions that Federal governmental action is the effective factor making the compulsion here possible, that Federal constitutional question is therefore present and that such constitutional question must be answered against the Federal action—are fully discussed in the plaintiff appellees' brief (pp. 40-49). Since, however, the majority opinion does not in any way touch upon or question these propositions, they will not be further developed or elaborated here.

"... We are of opinion and hold that the very questions now raised by plaintiffs were before the Court and decided in Hanson ..."

It is respectfully submitted that this is a grievous, drastic and manifest error. In view of the basic freedom which is here at stake, the plaintiffs earnestly pray the Court's careful consideration of the following analysis. Upon such consideration, it will definitely be seen that the Hanson decision, so far from necessitating or requiring the holding which has here been made, actually points towards and suggests an opposite ruling in the present case. And surely, unless positively precluded, this Court would prefer to preserve—not to sacrifice—the fundamental liberties which are here crying for protection.

The differences between this case and the Hanson case are major and vital. In the Hanson case, there were no issues tendered and no verdict or findings of fact such as are present and unquestioned in this case. In the Hanson case, there was not a scintilla of evidence showing that the defendant unions took dues money from employees and with it made contributions to the election campaigns of candidates for public office. In the present case, there was an impressive array of such evidence, laboriously gathered, and [fol. 399] painstakingly presented to satisfy all technical requirements as to relevance and admissibility in a Court of law. There are, for example, in the record in this case 29 pages of exhibits (R. 303-332) setting forth by dates, names and individual amounts, literally hundreds of thousands of dollars of contributions paid to candidates whom the union leaders selected as the recipients of such largess.[1]

And the jury, as has been noted, specifically found that "the defendant unions used dues and fees which they collect from railroad employees to make contributions to the campaigns of candidates for election to public office." Yet, although there is No Such Evidence in the Hanson record and no such finding in that case, the majority opinion declares, and proceeds entirely upon the proposition, that

[1] This vital evidence, incidentally, the majority opinion, in reviewing "the testimony and documents" in the case, does not once mention.

"the very questions now raised by plaintiffs were before the Court and decided in Hanson!"

Also introduced in this case—and not to be found in the Hanson record—is further voluminous evidence, directly bearing upon the issue which the jury here answered, and which were neither tendered nor answered in Hanson. For example, there are in the record here copies of 36 special editions (R. 282,300) of a publication partly paid for out of compulsory dues money collected from employees (R. 132), espousing and pushing the election campaigns of selected candidates for the House of Representatives and Senate of the United States, and each such "special" edition running to "something less than a million copies" (R. 247)—also, for example, a "report of the AFL-CIO Executive Council, 1957," showing expenditures, likewise out of funds derived in part by defendant unions from employees' [fol. 400] compulsory dues payments, of $92,343.01 and $139,071.74, for "legislative" purposes (R. 149), $232,860.72 and $618,036.12 for "international affairs" (R. 150), $352,372.18 and $365,722.04 for political "education" (R. 150), and disclosing the use of such funds to procure the enactment or defeat of legislation in such fields as "The Bricker Amendment," "Disclosure of FBI Files," "Enemy Alien Assets," "Juvenile Delinquency," "Hell's Canyon," "TVA" and "Pay Television" (R. 283-303).

None of this was in the Hanson record. No findings were made as to any such matters in Hanson. Yet, as has been emphasized, the majority opinion rests solely upon the ground that Hanson cannot be distinguished from this case and that what is present here was present there.

What did the United States Supreme Court consider that it had before it in Hanson? Did the Court consider that the record in Hanson raised issue as to the use of compulsorily collected dues money for influencing legislatures and votes in public elections and the placing of selected candidates in public office? Did the United States Supreme Court intend to rule in Hanson that compulsion upon employees, forcing them to pay out their money for these purposes, can be imposed through Congressional action—without the United States Constitution affording them any protection? It is submitted that any natural and unstrained reading of the

Hanson decision shows clearly and definitely that the Court did not consider that it had any such case before it and that it was not making any such ruling.

The United States Supreme Court said in Hanson:

> "The financial support required relates, therefore, to the work of the union *in the realm of collective bargaining* . . . If 'assessments' are in fact imposed for [fol. 401] purposes *not germane to collective bargaining, a different problem would be presented.*"
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> • • • • • • •
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> "If other conditions are in fact imposed, or *if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity* or other action in contravention of the First Amendment, *this judgment will not prejudice the decision in that case.* For we pass *narrowly* on Section 2, Eleventh of the Railway Labor Act. *We only hold* that the requirement for financial support of the *collective bargaining* agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments." (Emphasis supplied.)
>
> Railway Employees' Department, AFL v. Hanson, 351 US 225, 235, 238.

Since the United States Supreme Court said that it was only sustaining compulsory employee payments for the support of "the work of the union in the realm of collective bargaining," how is it to be said, as the majority opinion in this case now says, that the United States Supreme Court in Hanson was sustaining compulsory employee payments for the influencing of votes in public elections and for the contributing of money to candidates for public office? Obviously this can be said only by holding that "the realm of collective bargaining" includes the influencing of votes in public elections and the making of money contributions to candidates for public office! There is no avoiding this meaning—that "the realm of collective bargaining" encompasses the use of Compulsory employee dues For Any and All Political Purposes whatsoever. The Supreme

Court of the United States did not so rule but the Supreme Court of North Carolina has precisely so ruled.

[fol. 402] It must be repeated that the United States Supreme Court had before it no record presenting an issue of employees' compulsory payments being used to influence elections and to place selected candidates in public office. The Supreme Court of Nebraska in the Hanson case had referred to unions' using funds for purposes unrelated to collective bargaining, and the majority opinion here says that the plaintiffs in that case, in their brief before the United States Supreme Court, "appear to have drawn into sharp focus the matters now pressed." Actually the plaintiffs in the Hanson case devoted only seven or eight pages of their 111-page brief in the United States Supreme Court to this subject, and for the very good reason that they had practically no record and no verdict or findings of fact upon which to stand with respect to this phase of their case. To be sure, they did what they could, upon the record they had, to draw this, along with all other aspects of their case, into "focus," but the United States Supreme Court obviously considered that this issue was not in "focus" in that case.

The language of the high Court's opinion makes it clear that the Court did Not consider that it was confronted with such issue and that it was Not deciding such issue. But by reason of the evidence and the unchallenged verdict of the jury in the present case, this Court cannot avoid the fact that it is confronted with exactly this issue. And how does this Court decide the issue? Simply by saying that the United States Supreme Court has already decided it!

Apart from the fact that the record before it presented no such issue, how clear is it from the United States Supreme Court's language that it was not ruling with respect to the use of compulsory employee payments for the influencing of votes and the placing of candidates in public office? It will be observed that the Court took pains to use, [fol. 403] and to repeat again and again, words of reservation, qualification and limitation: "no more has been attempted here"—"a different problem would be presented"—"on the present record"—"that problem is not presented by this record"—"this judgment will not prejudice the de-

cision in that case"—"we pass narrowly"—"we only hold"—"we express no opinion."

What was the United States Supreme Court reserving? According to the majority opinion of this Court, nothing, insofar as the taking and using of money is concerned. For it, when the United States Supreme Court said that employees could be compelled to make payments to support "the work of the union in the realm of collective bargaining," it actually meant that employees could be compelled, against their will, to make payments to such political purposes as the influencing of votes and the placing of selected candidates in public office—then what reservation was there in the Court's ruling? Is that not a completely unlimited use of the employee's money? It is difficult to conceive what would be unlimited use if this is not.

And if the "realm of collective bargaining" includes the influencing of public elections and the placing of selected candidates in office, then that "realm" extends to all things and, indeed, becomes equated with the establishment and operation of government itself. In which event the United States Supreme Court's repeated words of reservation become utterly meaningless—and nothing other than a solemn mockery to those who by such semantics are dispossessed of their liberties. It is submitted that the United States Supreme Court did not so intend and that this Court has profoundly erred in ruling that the United States Supreme Court did so intend.

The majority opinion, recognizing that the language of reservation in the Hanson decision must be given an im-[fol. 404] port of some sort, suggests that such language implies protection against any compulsion which might seek to require employees "to sign application blanks" or "to attend meetings" or "to speak or act in harmony with the policies and objectives of defendant Unions." By what reason, however, or logic or of law, could the United States Supreme Court have been meaning to reserve protection for employees in such matters but not meaning to reserve any protection whatever for them in respect to taking their money by compulsion and using it for political purposes contrary to their wishes?

The Fifth Amendment to the Constitution of the United States guarantees an individual against a taking of his "property" as truly as against a taking of his "liberty." Indeed, is it not impossible to draw a line of difference between taking a man's property from him by compulsion and invading his liberty?

Of what comfort is it to a citizen that he cannot be compelled to sign a Union application blank or attend a Union meeting if he can be forced against his will to contribute a part of his money or property to whatever causes or objectives, political or otherwise, the Union may designate? Likewise, of what import is it to say that he will be protected in speaking or voting for the candidate whom he favors but that he can be compelled against his will to support with his money the candidate whom he opposes?

Would this not be a self-contradictory shibboleth indeed —as insupportable in law as it is in common sense and reasoning? Yet, the majority opinion assumes that the United States Supreme Court in Hanson was making this very distinction and was reserving protection for the citizen in the one instance but not in the other.

The point is actually placed beyond argument, however, by the language of the United States Supreme Court in [fol. 405] Hanson. The Court obviously did intend to reserve protection for the employee, not only in such matters as his signing application blanks, attending meetings and expressing himself with respect to policies and candidates selected by the Union, but also in the matter of compulsory collection of money from him for the support of such policies and candidates. For, as has been heretofore noted, the Court said:

> "If 'assessments' are in fact imposed for purposes not germane to collective bargaining, a different problem would be presented."
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> • • • • • • •
>
> "If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment,

this judgment will not prejudice the decision in that case.".

Railway Employees' Department, AFL, v Hanson, 351 US 225, 235, 238.

The Court was thus obviously and undeniably expressing reservation as to what it might later rule with respect to the compulsory exaction of money "for purposes not germane to collective bargaining" or for purposes otherwise exceeding constitutional limitations—and was certainly not saying, as the majority opinion suggests, that protection was being reserved only as to matters of signing applications, attending meetings, speaking one's views and the like. The Court definitely and positively did say that protection was also being reserved with respect to taking money away from an employee and using it for purposes which might violate his constitutional guarantees.

But, the majority opinion seems to say, this reservation of ruling with respect to matters of monetary payments [fol. 406] is confined to possible situations in which compulsory "assessments" are imposed upon employees and here "the jury's findings refer to 'dues and fees,' not to 'assessments.'" Surely, however, this would be another distinction without a meaning. What possible difference could it make from a logical, practical, legal, or any other standpoint, whether a part of every employee's regular compulsory dues is contributed to a certain candidate or whether a special compulsory assessment upon every employee is contributed to that candidate?

Here again, however, the question is not left to argument. For the language in Hanson makes clear that no such distinction is being made. The United States Supreme Court used the terms "dues," "fees," and "assessments" interchangeably. The Court said that if "assessments" are imposed for purposes offending constitutional limitations, "a different problem would be presented" and the Court said that "if dues, initiation fees, or assessments" are imposed for purposes offending constitutional limitations, "this judgment will not prejudice the decision in that case." Nor could a distinction sensibly have been drawn, for, as has been emphasized, if money is collected

from an employee by compulsion and used for purposes which infringe his constitutional rights, it certainly can make no difference, legal, logical or otherwise, whether the employee is compelled to pay the money as "dues" or as "assessment."

The majority opinion refers to the moneys which the employees "are required to contribute" as "inconsequential sums." The record shows that the amount collected from employees by one of the defendant Unions alone is more than $8,000,000.00 per year (R. 76). Each employee's compulsory initiation fee is $10.00 and his compulsory dues are at present $2.25 per month (R. 71). Nor is there any limitation whatever, either in the contract or in the Congres-
[fol. 407] sional Act here involved, as to how far these exactions may be enlarged and increased.

But apart from these facts, since when does a citizen's constitutional right depend upon any question of whether the amount of money or property taken from him is large or small? The wheels of justice in this Commonwealth have not heretofore been geared to dollar values. The shield of the Constitution protects the man who is compelled to pay "inconsequential sums" as truly and as completely as it protects the man who may be compelled to pay larger sums.

The plaintiffs, says the majority opinion, "do not allege or contend that defendant unions made unlawful expenditures in violation of the Federal Corrupt Practices Act." But the plaintiffs do allege and contend that the defendant unions have made and are making expenditures which are unlawful as against employees who by compulsion are required to furnish the money for such expenditures. And that is all that is pertinent in this action.

The Federal Corrupt Practices Act is, of course, a criminal statute and the evidence presented in this case may well disclose a violation of that statute by the defendant unions. But it is certainly not essential to this civil suit that the plaintiffs should allege that the defendants not only have violated the plaintiffs' constitutional rights but a Federal criminal statute as well. In fact, had such an allegation been included in the complaint, it probably would have been subject to a motion to strike it from the com-

plaint, as being immaterial to this civil action on behalf of the plaintiffs.

Further, says the majority opinion, the plaintiffs do not "allege or contend that any expenditure made by defendant unions was otherwise than in accordance with the wishes and will of the majority of their members." This, too, it is submitted, is wholly irrelevant. The plaintiffs [fol. 408] bring this suit not to complain that the majority are being wronged but that they, the minority, are being wronged in that they are being forced, in order to hold their employment, to contribute money to political purposes which they oppose and which they cannot constitutionally be compelled to support against their will. As has been declared by the highest Court:

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."
>
> West Virginia State Board of Education v Barnette, 319 US 624.

And by other eminent authority, it has similarly been declared that:

> "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical."
>
> Thomas Jefferson, Author of the Laws of Virginia, Statutes at Large, XII, 84-86.

Incidentally, as to the majority of the Union members, including even the local officials of the Unions, the record in this case is replete with testimony that they have neither knowledge of nor part in the expenditure of Union funds by the national officers of the unions and that in actual and

practical fact they "do not know any of the things" that the national officers do with the moneys which are compulsorily collected from employees (R. 106-107, 103-104, 112-117, 95, 96-97, 98-99).

Finally, the majority opinion points to what seems a [fol. 409] further irrelevancy, namely, that the answer filed by the plaintiffs' employer, the defendant Southern Railway Company, "discloses that it shares the views expressed and pressed by the plaintiffs." It may be that the Southern Railway Company "shares" the plaintiffs' views on the matter at issue. But of what pertinence is that to the plaintiffs' rights? And, likewise, of what help or comfort to the plaintiffs is the Southern's suggested sympathy, when the Southern has entered into a contract with the defendant Unions to discharge, and intends to discharge, and is discharging, employees (R. 13, 18, 122) who fail to make the compulsory payments of money which are here in issue?

It should not be overlooked that, in the course of this case, two of the ablest Judges of the Superior Courts of North Carolina reached a conclusion contrary to that announced in the majority opinion—as did Justice Parker in his clear and cogent dissent in this Court. So, likewise, did the entire membership of the Supreme Court of the State of Georgia, in the case of Looper v Georgia, Southern & Florida Railway, 213 Ga. 279, 99 SE 2d 101. All these members of the judiciary have been of the considered opinion that the United States Supreme Court in the Hanson case did not rule upon and did not intend to rule upon what has been alleged and proved in the present case.

It will not do to assume that if this Court has fallen into error the United States Supreme Court will correct the error. The United States Supreme Court, of course, does not review all cases which it is asked to review, and it has repeatedly made clear that it does not and cannot undertake to correct all erroneous decisions made in the Courts below it. Agoston v Pennsylvania, 340 US 844.

The time and the place to correct the error which the plaintiffs have earnestly endeavored to show to the Court is here and now. And the way is open. This Court has be- [fol. 410] fore it a case which is basically and vitally dif-

erent from that which the United States Supreme Court had before it in Hanson—different in allegation, in evidence, in issues and in findings. The United States Supreme Court in Hanson, so far from dictating a decision in the present case, actually foresaw and pointed to such a case as this and declared that then "a different problem would be presented" and that it did not intend to "prejudice the decision" in such a case.

Surely, with the fork in the road open and this Court being free to choose, it will not itself select the course that denies and destroys the fundamental liberties which are here struggling for survival. Surely, it must never be said that the entombment of these liberties bears the seal of the Supreme Court of the State of North Carolina.

Respectfully submitted,

Whiteford S. Blakeney, Blakeney and Alexander,
Attorneys for the Plaintiffs.

Referral of Petition for Rehearing

In conformity with the Rules of this Court, the plaintiffs respectfully request that the foregoing Petition to Rehear be referred to:

Justice Denny and Justice Higgins.

Whiteford S. Blakeney, Attorney for Plaintiffs.

[fol. 411] Certificate of Members of the Bar With Respect to Petition to Rehear

We, the undersigned, do hereby certify that:

We are, and have been for more than five years, members of the Bar of this Court. We are not, and have not been, of counsel for any party in this suit and we have no interest in the subject matter of this action. We have carefully examined the case and the law bearing thereon and the authorities cited in the majority and dissenting opinions in this case.

Upon the evidence, the issues and verdict of the jury, it seems to us that this case presents squarely for decision the important constitutional question as to whether, by the intervention of congressional action, employees can be

required to contribute to purely political purposes, such as the election of selected candidates to public office, as a compulsory condition of their employment.

It seems clear to us that no evidence, issues or findings in the case of Railway Employees' Department, AFL, v Hanson, 351 US 225, presented this issue for decision in that case. It further seems definite to us, from the opinion of the United States Supreme Court in the Hanson case that the Court did not consider that this issue was there presented and reserved ruling upon it.

For these reasons, we are unequivocally of the view that the majority opinion in the present case errs in holding that the decision of the United States Supreme Court in the Hanson case controls this case.

Respectfully submitted,

William T. Covington, Jr., Paul C. Whitlock.

[fol. 412]

PETITION TO REHEAR ALLOWED—May 20, 1959

Petition Allowed this the 20th day of May, 1959.

Emery B. Denny, Carlisle W. Higgins, Associate Justices.

[fol. 413]

NORTH CAROLINA SUPREME COURT
Spring Term 1962
No. 249—Mecklenburg

ANNA MAE ALLEN, MILLICENT C. BAILEY, DOROTHY IRENE BALL, C. ELIZABETH BROWN, MARJORIE L. BROWN, WILLIE MAE BROWN, D. L. BRYANT, MARY CALLAHAM, SHIRLEY CARRIKER, EDWARD D. CASEY, E. L. CLOANINGER, JR., W. H. DAVIS, ROY T. ELLIS, JR., E. JUNE JOY, H. L. JUSTICE, R. F. KISTLER, PEGGY MCCRANIE, E. E. QUEEN, REBECCA SCHOLL, KATHERINE K. SNAVELY, DOLORES SHEETS, LEE L. STICKLEY, ROBERT R. TATUM, MIRIAM P. THOMPSON, AILEEN E. WARNER and KATHRYN C. WEISNER, for themselves and in behalf of all other employees of the Southern Railway Company having a common interest in the subject matter of this action, Plaintiffs,

and BICKETT BASS, MARY B. CROSBY, GEORGE D. ATWELL, HAROLD B. HACKNEY, CELESTIA S. SMITH, CRAVEN SMITH, R. P. POWELL, H. L. NUSSMAN, J. B. NUSSMAN, SR., JOHN W. JORDAN, and L. J. BYRUM, Additional Plaintiffs,

v.

SOUTHERN RAILWAY COMPANY, INTERNATIONAL ASSOCIATION OF MACHINISTS, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, THE ORDER OF RAILROAD TELEGRAPHERS, BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AMERICAN TRAIN DISPATCHERS ASSOCIATION, RAILROAD YARDMASTERS OF AMERICA and RAILWAY EMPLOYEES' DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, Defendants.

OPINION ON REHEARING—April 11, 1962

[fol. 414] On petition to rehear.

This action was instituted by named non-union employees of Southern Railway Company for injunctive relief. Plaintiffs allege that they were notified they would be discharged from their jobs if they did not join one of defendant Unions and pay to it fees, dues and assessments, and that this notice was given them pursuant to provisions of a Union shop agreement between the Railway Company and defendant Unions. The provisions of the agreement in question are authorized by the Amendment to the Railway Labor Act of 10 January 1951 (64 Stat. 1238, 45 USCA, s. 152, Eleventh). Plaintiffs seek generally to restrain collection from them of any dues, fees or assessments not reasonably necessary and related to collective bargaining.

Blakeney, Alexander & Machen for plaintiffs, appellees.

Schoene & Kramer and J. B. Craighill for defendant Unions, appellants.

Per Curiam. This case was before this Court at the Fall Term 1958. An opinion, delivered by Bobbitt, J., for a majority of the Court was filed at the Spring Term 1959. Allen v. R. R., 249 N. C. 491, 107 S. E. 2d 125. That opinion gives an adequate summary of the pleadings, evidence, issues of fact, preliminary proceedings, and judgment in the trial court. A repetition of these matters and a restatement of the legal questions involved are unnecessary here.

After our decision at the Spring Term 1959, plaintiffs, in apt time, filed a petition to rehear. The petition was allowed on 20 May 1959 by the two Justices to whom it was referred, but the Court deferred rehearing pending decision on appeal in a Georgia case originally captioned Looper v. Georgia, Southern & Florida Railway Co., 213 Ga. 279, 99 S. E. 2d 101, and later captioned International Association of Machinists v. Street, 215 Ga. 27, [fol. 415] 108 S. E. 2d 796.

The Unions, under 28 USCA, s. 1257 (1), appealed the latter decision of the Supreme Court of Georgia to the Supreme Court of the United States which, on October 12, 1959, noted probable jurisdiction. 361 U. S. 807, 4 L. Ed. 2d 54, 80 S. Ct. 84. The cause was argued twice in the

Supreme Court of the United States, having been reargued on January 17 and 18, 1961. It was decided June 19, 1961. International Association of Machinists v. Street, 367 U. S. 749, 6 L. Ed. 2d 1141, 81 S. Ct. 1784.

After the decision of the Supreme Court of the United States in the Street case, a rehearing of our former decision, by oral arguments and by briefs, was held.

Before a decision acceptable to and in accordance with the opinion of a majority of this Court was reached, Winborne, C. J., retired from the Court, Denny, J., was elevated to Chief Justice, and Sharp, J., was appointed to fill the vacancy on the Court. Justice Sharp, formerly a Superior Court Judge, is disqualified and declines to take part in the consideration and decision of this appeal for the reason that she presided at a hearing and entered an interlocutory order in this case at the Superior Court level.

This leaves the Court evenly divided. Three Justices are of the opinion that the judgment of the Superior Court should be affirmed. Three are of the opinion that there was error in the trial below.

The Court being equally divided, the judgment below is affirmed. The judgment appealed from stands, but not as a precedent. Schoenith v. Realty Co., 244 N. C. 601, 94 S. E. 2d 592; Ward v. Odell, 126 N. C. 946, 36 S. E. 194.

Affirmed.

Sharp, J., took no part in the consideration of this appeal.

[fol. 416]

SUPREME COURT OF NORTH CAROLINA,

Spring Term 1962

No. 249—Mecklenburg

ANNE MAE ALLEN, MILLICENT C. BAILEY, DOROTHY IRENE BALL, C. ELIZABETH BROWN, MARJORIE L. BROWN, WILLIE MAE BROWN, D. L. BRYANT, MARY CALLAHAM, SHIRLEY CARRIKER, EDWARD D. CASEY, E. L. CLOANINGER, JR., W. H. DAVIS, ROY T. ELLIS, JR., E. JUNE JOY, H. L. JUSTICE, R. F. KISTLER, PEGGY McCRANIE, E. E. QUEEN, REBECCA SCHOLL, KATHERINE K. SNAVELY, DOLORES SHEETS, LEE L. STICKLEY, ROBERT R. TATUM, MIRIAM P. THOMPSON, AILEEN E. WARNER and KATHRYN C. WEISNER, for themselves and in behalf of all other employees of the Southern Railway Company having a common interest in the subject matter of this action, Plaintiffs,

and BICKETT BASS, MARY B. CROSBY, GEORGE D. ATWELL, HAROLD B. HACKNEY, CELESTIA S. SMITH, CRAVEN SMITH, R. P. POWELL, H. L. NUSSMAN, J. B. NUSSMAN, SR., JOHN W. JORDAN, and L. J. BYRUM, Additional Plaintiffs,

v.

SOUTHERN RAILWAY COMPANY, INTERNATIONAL ASSOCIATION OF MACHINISTS, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, THE ORDER OF RAILROAD TELEGRAPHERS, BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AMERICAN TRAIN DISPATCHERS OF AMERICA and RAILWAY EMPLOYEES' DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, Defendants.

JUDGMENT

This cause came on to be argued upon the transcript of the record from the Superior Court of Mecklenburg County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

[fol. 417] It is therefore considered and adjudged by the Court here that the opinion of the Court be certified to the said Superior Court to the intent that the judgment is affirmed.

And it is adjudged further that the defendants and surety to the appeal bond, Travelers Indemnity Company, do pay the costs of the appeal in this Court incurred, to wit, the sum of Two Hundred Thirty-two and 65/100 ($232.65) Dollars, and execution issue therefor.

Certified to Superior Court this 18th day of May, 1962.

[fol. 418]

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER DENYING REHEARING—May 15, 1962

"After examination and review, the petition is denied this May 15, 1962. Carlisle W. Higgins, Associate Justice."

[fol. 426]

SUPREME COURT OF NORTH CAROLINA

Spring Term 1962

No. 247—Mecklenburg

ANNA MAE ALLEN, et al., Plaintiffs,

v.

SOUTHERN RAILWAY COMPANY, et al., Defendants.

CERTIFICATE

The undersigned members of the Bar of the Supreme Court of North Carolina, each certifies as follows:

1. That he has no interest in the subject matter of this case and has not been of counsel for any party or parties to the suit, and that he has been, for at least five years, a member of the Bar of the Supreme Court of North Carolina.

2. That he has carefully examined this case and the law bearing thereon, and the authorities cited in the *per curiam* decision of this Court, which was filed on or about April 11, 1962.

3. That he deems the decision and the opinion to be erroneous, in that it provides that an equal division of the Supreme Court on the rehearing has the effect of reversing a prior decision of the Supreme Court and leaving in effect a judgment of the lower court which had been reversed by the prior Supreme Court decision; that the undersigned is of the opinion that the effect of an even division of the Supreme Court on a rehearing should be to leave in effect and force the prior decision of the Supreme Court rather than the decision of the lower court.

This 4th day of May, 1962.

James B. Ledford, J. C. Sedberry.

[fol. 427]

IN THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

ANNA MAE ALLEN, et al.

v.

SOUTHERN RAILWAY COMPANY, et al.

DOCKET ENTRIES

Appeal Docketed	30 August 1958
Case Argued	25 September 1958
Opinion Filed	25 February 1959
Petition to Rehear Filed	3 April 1959
Petition to Rehear Allowed	20 May 1959
Case Re-argued	26 September 1961
Opinion Filed	11 April 1962
Petition to Rehear Filed	8 May 1962
Petition to Rehear Denied	15 May 1962
Final Judgment Entered	15 May 1962

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and the proceedings in the above entitled case, as the same now appear from the originals on file in my office.

I do further certify that separate from the foregoing is a true and perfect copy of Plaintiffs' Exhibits as follows, which are a part of the record and proceedings of this Court in the above entitled case: Plaintiffs' Exhibits Nos. 3A through 3AJ, Plaintiffs' Exhibits Nos. 19, 13, 12, 10, 9, 8, 7, 6, 5, 4 and 2.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this the 11th day of June, 1962.

Adrian J. Newton, Clerk of the Supreme Court of the State of North Carolina.

[fol. 428]

SUPREME COURT OF THE UNITED STATES

No. 316—October Term, 1962

Same Title

ORDER ALLOWING CERTIORARI—October 22, 1962

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided,* That no such agreement shall require such conditions of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided,* That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

* * * *

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

STATEMENT OF THE CASE

The petitioners and a number of other railway labor organizations, who were defendants below, are the same railway labor organizations that were defendants in the trial court and appellants in this Court in *International Association of Machinists* v. *Street*, 367 U.S. 740, 81 S. Ct. 1784, 6 L. Ed. 2d 1141. They are standard railway labor organizations which have at all material times been the collective bargaining representatives of their respective crafts or classes of employees of the Southern Railway. The appellees are employed by the Southern in two of the crafts so represented. The Southern Railway Company was a defendant in the courts below and is the same railroad as was a defendant and appellee in *International Association of Machinists* v. *Street*. It is a common carrier by railroad subject to the Interstate Commerce Act and as such a "carrier" within the meaning of and subject to the Railway Labor Act.

The individual appellees are residents of North Carolina and are employed by the Southern in that State in the crafts or classes represented by the petitioners. They purported to sue the Southern, the petitioners, and the other labor-organization parties to the union-shop agreement on behalf of all employees of the Southern represented in collective bargaining by any of such unions.

By the addition of subsection Eleventh (set forth above) to section 2 of the Railway Labor Act on January 10, 1951, Congress amended that Act so as no longer to prohibit all forms of union-security agreements but subject to the limitations and conditions

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES AND BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, *Petitioners*,

v.

ANNA MAE ALLEN, ET AL., *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

MILTON KRAMER
LESTER P. SCHOENE

SCHOENE and KRAMER
1625 K Street, N.W.
Washington 6, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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CASES CITED

International Association of Machinists v. Street, 367 U. S. 740 ..... 5, 8, 9

Railway Employes' Dept. v. Hanson, 351 U. S. 225 ..... 6, 8, 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES AND BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, *Petitioners,*

v.

ANNA MAE ALLEN, MILLICENT C. BAILEY, DOROTHY IRENE BALL, C. ELIZABETH BROWN, MARJORIE L. BROWN, WILLIE MAE BROWN, D. L. BRYANT, MARY CALLAHAM, SHIRLEY CARRIKER, EDWARD D. CASEY, E. L. CLOANINGER, JR., W. H. DAVIS, ROY T. ELLIS, JR., E. JUNE JOY, H. L. JUSTICE, R. F. KISTLER, PEGGY MCCRANIE, E. E. QUEEN, REBECCA SCHOLL, KATHERINE K. SNAVELY, DOLORES SHEETS, LEE L. STICKLEY, ROBERT R. TATUM, MIRIAM P. THOMPSON, AILEEN E. WARNER, KATHRYN C. WEISNER, BICKETT BASS, MARY B. CROSBY, GEORGE D. ATWELL, HAROLD B. HACKNEY, CELESTIA S. SMITH, CRAVEN SMITH, R. P. POWELL, H. L. NUSSMAN, J. B. NUSSMAN, SR., JOHN W. JORDAN, L. J. BYRUM and SOUTHERN RAILWAY COMPANY, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

The petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina affirming by an equally divided court the

judgment of the Mecklenburg Superior Court enjoining the enforcement of a union-shop agreement against the respondents.

OPINIONS BELOW

The judgment of the trial court was rendered without formal opinion and is unreported; it appears on pages 34-36 of the mimeographed record below and is printed as Appendix A to this petition. The first opinion of the Supreme Court of North Carolina, reversing the trial court, is reported at 249 N.C. 491, 107 S.E. 2d 125, and is printed as Appendix B hereto. The second opinion of the Supreme Court of North Carolina, on rehearing, affirming by an equally divided court the judgment of the trial court, is not yet reported and is printed as Appendix C hereto.

JURISDICTION

The original decision below, reversing the trial court, was entered February 25, 1959. R. 428. A petition for rehearing was granted May 20, 1959. R. 428. On April 11, 1962 the court below, on rehearing, divided equally and ordered that such division affirmed the judgment of the trial court. R. 395-8. Petition for rehearing by these petitioners was denied May 15, 1962 (R. 399), and final judgment entered that day. R. 428. The jurisdiction of this Court is invoked under 28 U.S.C., sec. 1257 (3).

QUESTIONS PRESENTED

1. Whether the application of a union-shop agreement, conforming in all respects to the provisions of section 2, Eleventh of the Railway Labor Act (64 Stat. 1238, 45 U.S.C., sec. 152, Eleventh), may be enjoined

because the union involved uses a portion of its dues and fees to (a) support or oppose legislation, (b) influence votes in public elections, (c) make contributions to campaigns of candidates for public office, and (d) (in the case of one of petitioners) pay death benefits to the beneficiaries of members who die, on the basis of a jury finding that such activities were not necessary or related to collective bargaining.

2. Whether the application of a union-shop agreement under section 2, Eleventh of the Railway Labor Act may be enjoined with respect to employees who did not know of any legislative or political activity of the union to which they were opposed and who did not inform the union that represented their craft of any activity or expenditure to which they were opposed.

3. Whether the application of a union-shop agreement under section 2, Eleventh of the Railway Labor Act may be enjoined with respect to employees who since the date of the agreement have not been members of the union or paid any dues, fees, or assessments to the union.

STATUTE INVOLVED

Section 2, Eleventh of the Railway Labor Act (Act of January 10, 1951, c. 1220, 64 Stat. 1238, U.S.C. Tit. 45, § 152, Eleventh) reads in pertinent part as follows:

> "Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any state, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

prescribed by the statute. It provided that such agreements should be permitted "Notwithstanding any other provision of this Act, or of any other statute or law of the United States, or territory thereof, or of any State". Thereafter, on February 27, 1953, effective April 15, 1953, the Southern and the union defendants below entered into a union-shop agreement substantially in the terms of the 1951 amendment to the Railway Labor Act. The agreement requires (subject to certain conditions and limitations not here relevant) that all employees covered by the basic collective bargaining agreement between the carrier and the union, as a condition of their continued employment, become members of the union representing their craft or class within 60 days after the beginning of such employment, or after the effective date of such agreement, whichever is later. However, no such condition of employment applies to any employee to whom membership is not available on the same terms and conditions as are generally applicable, nor to any employee who might be denied membership or whose membership is terminated for any reason other than failure to tender the periodic dues, fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. The union-shop agreement is the same agreement as was involved in the *Street* case, and except for the names of the parties is identical with the union-shop agreement before this Court in *Railway Employes' Department* v. *Hanson*, 351 U.S. 225.

The individual appellees chose not to comply with this condition upon their continued employment by the Southern. Instead they brought, or became addi-

tional parties to, this action seeking to enjoin the Southern and the unions from carrying out or enforcing the agreement (R. 9), alleging that they were not members of the respective unions and did not pay dues, fees, or assessments to the unions and did not desire to do so (R. 7-8, 31), and alleging that enforcement of the agreement would be unlawful. R. 8. The union defendants answered, among other things admitting that plaintiffs were not members and did not make any payments to the union, and alleging that the union-shop agreement was entered into in accordance with the authorization of section 2, Eleventh of the Railway Labor Act and was therefore a valid and enforceable agreement. R. 18, 19.

The union defendants also filed a demurrer to the complaint on the ground (among others) that the agreement was specifically authorized by federal law, including section 2, Eleventh of the Railway Labor Act. R. 25. The plaintiffs amended their complaint to allege that the unions spent a portion of their receipts to finance political activities contrary to the choice of the plaintiffs. R. 23-4. The demurrer was overruled and an earlier-issued temporary injunction continued. R. 26-7.

Trial of the case was before a jury. At the close of the plaintiffs' direct case a demurrer to the evidence was sustained as to all defendant unions except these petitioners, and overruled as to these petitioners. R. 32. The jury returned a special verdict finding that the petitioners use dues in part to support or oppose legislation and to influence votes in public elections, and that these activities as well as the death-benefit system of the Brotherhood of Railway Clerks are not necessary or reasonably related to collective bargain-

ing. R. 33-4, App. 1a. On the basis of such jury verdict the trial court enjoined petitioners (and the Southern Railway) from placing any compulsion of any nature on any of the respondents to join either of the petitioning unions or conform to any of their rules or disciplines, with the proviso that petitioners "shall be permitted, upon proper notice, to present proof to the Court, not conflicting or inconsistent with the findings of the jury . . . as to what portion of the periodic dues, initiation fees and assessments . . . will be reasonably necessary and related to collective bargaining between the defendant unions and the plaintiffs' employe . . . and upon making of such proof . . . to the satisfaction of the Court, this Order shall have no application or force or effect with respect to such portion of such periodic dues, initiation fees or assessments . . ." R. 35, App. 2a.

On appeal to the Supreme Court of North Carolina that Court first, by a six to one majority, reversed the trial court principally on the authority of the *Hanson* case. App. 3a. After the decision of the trial court in *International Assn. of Machinists* v. *Street* (367 U.S. 740), a rehearing was granted on May 20, 1959. R. 428. The Court below did nothing further until after the decision of this Court in the *Street* case, after which it ordered reargument which was had on September 26, 1961. R. 428. After reargument the Court divided equally and affirmed the trial court. R. 395-7, App. 26a. Petitioners' petition to rehear was denied and final judgment entered May 15, 1962. R. 399, 428.

The federal questions were first raised by petitioners in their answer in the trial court in which they relied on section 2, Eleventh of the Railway Labor Act as authority for entering into the union-shop agreement.

R. 19. The same contentions were raised in a demurrer (R. 25) which was overruled. R. 26. This was assigned as error. R. 352-3. They were raised also by a request to charge, and the trial court's refusal to charge, that under this Court's decisions the union-shop agreement here involved is valid notwithstanding that some portion of the dues, fees, and assessments may be used for purposes other than collective bargaining. Exception was taken thereto (R. 256) and such ruling was assigned as error on appeal. R. 351. With respect to the argument, infra, that the decision of the trial court, affirmed by an equally divided Supreme Court of North Carolina, is not in accord with the decision of this Court in *International Association of Machinists* v. *Street*, 367 U.S. 740, in that it predicated the injunction on unions engaging in political and legislative activities regardless of whether any of the plaintiffs' views were contrary to the position taken by the unions, the issue was raised repeatedly in the trial court during the taking of evidence, requesting charges to the jury, and objecting to charges to the jury; exceptions were taken to the trial court's rulings and such rulings were assigned as error on appeal. R. 40-2, 47-8, 252-4, 262, 273-4, 346-8, 361-2, 365-6.

REASONS FOR GRANTING THE WRIT.

The courts below have decided important federal questions in a way contrary to the controlling decision of this Court.

In *International Association of Machinists* v. *Street*, 367 U.S. 740, this Court held that under a railroad union-shop agreement entered into pursuant to Section 2, Eleventh of the Railway Labor Act, individual union members who are opposed to specific legislative and

political objectives supported by the union and who make such opposition known to the union would be entitled to limited relief against the expenditure of their funds on behalf of such legislation or candidates they oppose. The Court reversed the injunction of the Georgia courts against the enforcement of the union-shop agreement and indicated the kind of relief that might be appropriate; it held specifically that an injunction against enforcement of the union-shop agreement was not permissible relief.

None of the plaintiffs in this case testified to any specific legislative or political objective supported by the unions to which he or she was opposed or which objection was made known to the union. Most of those who testified stated that they were opposed to unions engaging in *any* political activity. Under the *Street* case, in such posture of the facts, none of the plaintiffs is entitled to any relief. Yet they were granted an injunction against enforcement of the union-shop agreement.

The opinion of this Court in the *Street* case is very explicit in stating (at p. 771):

> "However, the union-shop agreement itself is not unlawful. . . . *The appellees therefore remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement.* . . . We think that an injunction restraining enforcement of the union-shop agreement is therefore plainly not a remedy appropriate to the violation of the Act's restrictions on expenditures." (Emphasis supplied.)

There can thus be no doubt that this Court held that there could not properly be an injunction against enforcement of the union-shop agreement, and that who-

ever might be entitled to a remedy, and whatever an appropriate remedy might be, an injunction against enforcement of the union-shop agreement could not properly be granted. Yet an injunction against enforcement of the union-shop agreement is exactly the relief granted below, and the plaintiffs below have not made, are not making, and unless the judgment below is reversed will not make, any payments to the union although this Court held specifically that they "remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement."

It is also plain that under the *Street* decision relief could be granted only with respect to expenditures for specific political purposes opposed by an individual and only for such individual members who make known to the union their opposition to the expenditure of their dues to support such specific and specified causes. The opinion of the Court in the *Street* case, the concurring opinion of Mr. Justice Douglas, and the opinion of Mr. Justice Black dissenting in part, are replete with statements limiting relief to members who are opposed to specific legislative or political causes supported by the unions and who make known to the unions such opposition. 367 U.S. at 744, 747-50, 764, 767-70, 776, 786-91, 793-5. (The dissenting opinion of Mr. Justice Frankfurter and Mr. Justice Harlan would have reversed the Georgia courts and remanded with instructions to dismiss the complaint.) Only Mr. Justice Whittaker would have affirmed. It is thus crystal clear that all but one of the Justices who thought that any relief should be granted would limit it very specifically to employees *who had made known to the union* that they were *opposed to particular candidates or causes* which the union was spending dues money to pro-

mote. (Some of the Justices differed only in the extent of relief they would grant such persons.) The distinction of *Railway Employes' Dept.* v. *Hanson*, 351 U.S. 225, in the opinions on the basis of that case involving expenditures to support causes "which may or may not be of an employee's choice" (p. 747) and in which there was "nothing to show that the employees there involved opposed the use of their money for any *particular* political objective" (at pp. 747-8) makes the proposition beyond reasonable dispute.

Not one of the plaintiffs below meets either of those tests. There is nothing in the record, nor any finding, even remotely indicating that any of them ever advised the union he or she was opposed to union political activities or to what particular activities such objection was held. Yet not only were they granted relief, but they were granted the type of relief that this Court held could not be granted in any event, to wit, an injunction against enforcement of the union shop.

The testimony of the plaintiffs below is summarized at pages 39-53, 58-66, and 90-2 of the Record. It is plain that their opposition is directed not to any particular activity or expenditure of their collective bargaining representatives but rather to the union shop, and just as plainly the union shop is lawful. 367 U.S. at 771. Not one of them could name a particular candidate or proposed legislation or other cause supported or opposed by the union contrary to his or her views, with the sole exception of the unions supporting the enactment of Section 2, Eleventh of the Railway Labor Act; the enactment of Section 2, Eleventh necessarily occurred before there was a union shop. Not one of them testified that he or she ever advised a union of

his or her views on anything. Since none of the plaintiffs makes any pretense of showing any political or ideological cause promoted or opposed since the effective date of the union-shop agreement by his or her collective bargaining representative contrary to his or her views, and since even if there had been such a showing not one of them ever made known to the union his or her opposition to such cause, there is a compound failure to present a cause of action under the *Street* case. Yet not only does the decision sustain a cause of action but it grants relief that this Court held would be inappropriate where there is a cause of action.

It is clear beyond reasonable dispute that the injunction against enforcement of the union-shop agreement is contrary to the holding of this Court in the *Street* case. The opinion of the Court in that case makes this abundantly plain. As quoted above, it held (at p. 771):

> "However, the union-shop agreement itself is not unlawful. *Railway Employees' Dept.* v. *Hanson.* The appellees therefore remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement. . . . *We think that an injunction restraining enforcement of the union-shop agreement is therefore plainly not a remedy appropriate to the violation of the Act's restriction on expenditures.*" (Emphasis supplied.)

The decree below grants an injunction against enforcement of the union-shop agreement, and so cannot be sustained. Whatever rights the plaintiffs might have had, they did not include a right to have the enforcement of the union-shop agreement enjoined. The most the plaintiffs can find in the *Street* case is that they cannot be compelled to make political utterances

contrary to their actual beliefs, even though the making of such utterances is as indirect as the union making expenditures from dues receipts to promote such causes, if the individual makes known to the union his personal opposition to the particular political cause the union is supporting. See, e.g., pp. 774, 793. In the absence of "expressed objection" (p. 794) the individual is to be regarded as a voluntary or acquiescing dues payer (p. 795) because "dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee." At p. 774. None of the plaintiffs below is a member of the union and so none of them has paid any money to the union, voluntairily or involuntarily. R. 7-8, 18.

It necessarily follows that not only was it error to grant an injunction against the enforcement of the union-shop agreement, but that whatever remedies a plaintiff may have can arise only after he has complied with the union-shop requirement, and none of the plaintiffs below has complied with such requirement. "Appellees' grievance stems from the *spending of their funds* for purposes not authorized by the Act *in the face of their objection*, not from the enforcement of the union-shop agreement by the mere *collection* of funds." At p. 771. Since the appellees have not paid any funds to the union and have not announced to the union their objection to any particular cause supported by the union with dues receipts, they have failed to present a cause of action or to show that they are entitled to any relief. And petitioners are deprived of rights specifically conferred upon them by section 2, Eleventh of the Railway Labor Act.

CONCLUSION

This case involves the very same union-shop agreement as was involved in the *Street* case, on the very same railroad. The holding below grants relief to persons who do not meet the requirements of entitlement to relief specified by this Court in the *Street* case and grants a form of relief that this Court held would not be appropriate in any event. Section 2, Eleventh cannot be interpreted to apply differently in North Carolina from the application this Court gave it in the *Street* case which arose in Georgia. The holding below erroneously deprives petitioners of important rights guaranteed them by federal law and erroneously prevents the operation of federal law. Accordingly, petitioners respectfully request that this Court issue a writ of certiorari to the Supreme Court of North Carolina to review the judgment below.

Respectfully submitted,

MILTON KRAMER
SCHOENE and KRAMER
1625 K Street, N.W.
Washington 6, D. C.

August 9, 1962

APPENDIX A

Final Judgment (Pless. J.)

THIS CAUSE coming on for trial before the undersigned and a jury, and having been tried as appears of record, and the jury having answered issues as follows:

1. Do the defendant Unions use dues and fees which they collect from railroad employees in support of or opposition to legislation which is not reasonably necessary or related to collective bargaining?

Answer: YES.

2. Do the defendant Unions use dues and fees which they collect from railroad employees to influence votes in elections to public office?

Answer: YES.

3. If so, is the same necessary or reasonably related to collective bargaining?

Answer: No.

4. Do the defendant Unions use dues and fees which they collect from rail road employees to make contributions to the campaigns of candidates for election to public office?

Answer: YES.

5. If so, is the same necessary or reasonably related to collective bargaining?

Answer: No.

6. Is the Brotherhood of Railway Clerks death benefit system necessary or reasonably related to collective bargaining?

Answer: No.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the defendants, and each of them, are hereby restrained and enjoined from placing any compulsion of any nature upon the plaintiffs, individually named as such in the caption of this case, in the course of their employment

with the Defendant Railway Company, whereby they, the said plaintiffs, against their free will and choice would be required to join the Defendant Unions, or conform to any rules or disciplines of Defendant Unions, or pay money to said Unions, to wit, the Brotherhood Railway and Steamship Clerks, Freight handlers, Express and Station Employees, and the Brotherhood of Railway Signalmen of America.

This Order, however, is subject to the following conditions:

The Defendant Unions shall be permitted, upon proper notice, to present proof to the Court, not conflicting or inconsistent with the findings of the jury as hereinbefore recited, as to what portion of the periodic dues, initiation fees and assessments, which they desire to collect from the plaintiffs, will be reasonably necessary and related to collective bargaining between the defendant Unions and the plaintiffs' employer, the Defendant Railway Company, and upon making of such proof, not conflicting or inconsistent with the findings of the jury as hereinabove recited, to the satisfaction of the Court, this Order shall have no application or force or effect with respect to such portion of such periodic dues, initiation fees or assessments or the imposition and collection thereof under the terms of the contract referred to in the pleadings.

The cause is therefore retained for such further hearings, either with or without a jury, and such further Orders as may seem appropriate should the proof referred to above be offered by the defendants.

It Is Further Ordered that the Defendants pay the costs of this action.

Dated this 15th day of May, 1958.

/s/ J. Will Pless, Jr.
Judge Presiding.

APPENDIX B

NORTH CAROLINA SUPREME COURT

Spring Term, 1959

No. 237-Mecklenburg

ANNA MAE ALLEN, ET AL., *Plaintiffs,*

v.

SOUTHERN RAILWAY COMPANY, ET AL., *Defendants.*

Appeal by Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and Brotherhood of Railway Signalmen of America, from Pless, J., and a jury, April 21, 1958, Regular Schedule "B" Civil Term, of Mecklenburg, docketed and argued as No. 251 at Fall Term, 1958.

The original plaintiffs instituted this action June 8, 1953, against Southern Railway Company, hereafter called Southern, and sixteen railroad labor organizations, hereafter called defendant Unions. After amendment to complaint, referred to below, eleven other individuals, as permitted by court order, became additional parties plaintiff.

Plaintiffs, non-operating employees of Southern, are not members of, and are unwilling to join, any of defendant Unions.

Plaintiffs alleged that, pursuant to provisions of a contract between Southern and defendant Unions, defendants notified them they would be discharged from their jobs if they did not, by June 15, 1953, join one of defendant Unions and pay to it "fees, dues and assessments"; that the provisions of said contract were "unconscionable and wrongful, contrary to the Constitution, the common law and the Statutes of the State of North Carolina and violative of the rights of the plaintiffs thereunder"; and plaintiffs prayed that defendants be restrained from their threatened enforcement thereof.

On June 8, 1953, on plaintiffs' *ex parte* application, a temporary restraining order was issued; and on June 17, 1953, after hearing, said restraining order was continued in full force and effect until the trial and final determination of the cause.

Thereafter, separate answers were filed (1) by defendant Unions and (2) by Southern. Defendants admitted their execution of a contract dated February 27, 1953, between Southern and other railroad corporations, referred to therein as "Carrier," and defendant Unions, which provided, *inter alia*, that "all employees of the Carrier . . . shall, as a condition of their continued employment . . . become members of the organization party to this agreement representing their craft or class within sixty (60) calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organization."

Defendant Unions asserted the validity of said contract, their right to enforcement thereof, and prayed that the restraining order be dissolved.

Southern prayed that the court "grant its declaratory judgment as to the validity of the Union Shop Agreement . . . and . . . declare the respective rights, status and other legal relations of the parties . . ." Southern is not a party to this appeal.

On February 1, 1957, (after the Hudson and Hanson decisions, referred to in the opinion,) plaintiffs as permitted by court order, filed an amendment to their complaint, in which they alleged, *inter alia*, that the periodic dues, initiation fees and assessments which defendant Unions collect from their members and which, unless protected by the court plaintiffs would be required to pay in order to retain their jobs with Southern, had been, were and would be regularly and continually used by defendant

Unions for the following purposes: (1) to carry on and finance insurance businesses, banking businesses and sundry other business enterprises which plaintiffs were not willing to finance or support; and (2) to carry on, finance and pay for political activities directly at cross purposes with the free will and choice of plaintiffs, including the election of candidates for public and governmental offices whom plaintiffs oppose and the defeat of other political candidates whom plaintiffs oppose and the defeat of other political candidates whom plaintiffs support and the enactment of legislation which plaintiffs oppose and the defeat of other legislation which plaintiffs support. Plaintiffs alleged that such use of their money by defendant Unions would not be germane to collective bargaining and that to compel plaintiffs against their will to pay money to defendant Unions for such purposes would deprive them of their rights under the First, Fifth and Ninth Amendments to the Constitution of the United States.

Thereupon, defendant Unions demurred to the complaint, as amended, on the ground that it did not state facts sufficient to constitute a cause of action. After hearing, the court overruled said demurrer; and, based on the facts alleged in said amendment to complaint, entered a new restraining order which remained in effect until the trial at April 1958, Term.

Upon trial Judge Pless, at the close of plaintiffs' evidence, entered judgment of nonsuit, dismissing the action as to all defendants except Southern and two of defendant Unions, to wit, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, hereafter called Brotherhood of Railway Clerks, and Brotherhood of Railway Signalmen of America, hereafter called Brotherhood of Railway Signalmen.

Thirteen plaintiffs testified. By reason of their craft or class, twelve were eligible for membership in the Brotherhood of Railway Clerks and one was eligible for member-

ship in the Brotherhood of Railway Signalmen. Two of the original plaintiffs were no longer employees of Southern. One of the additional plaintiffs, having become a supervisor, was no longer subject to the union shop agreement. There was no evidence as to the employment or craft status of the other twenty-one plaintiffs.

The gist of plaintiffs' testimony was as follows: (1) They were unwilling to join the union; (2) they opposed (compulsory) membership as a condition for retention of their jobs; and (3) they opposed the use by the union of any of their money (a) for the support or defeat of political candidates and (b) for the support or defeat of legislation.

Three plaintiffs (all who were questioned with reference thereto) testified to their opposition to the use by defendant Unions of any of their money to support or finance an insurance or death benefit program.

None of the plaintiffs testified concerning the use the unions had made and were making of money collected as periodic dues, initiation fees and assessments, from their members. Relevant thereto, plaintiffs offered depositions of officials of the Brotherhood of Railway Clerks and the Brotherhood of Railway Signalmen, adversely examined prior to trial, and documentary evidence.

Motions for judgment of involuntary nonsuit, made, at the close of plaintiffs' evidence and again at the close of all the evidence, by the Brotherhood of Railway Clerks and by the Brotherhood of Railway Signalmen, were overruled.

Six issues were submitted to the jury. The jury found that defendant Unions used "dues and fees" (1) in support of or in opposition to legisaltion, (2) to influence votes in elections to public office, and (3) to make contributions to the campaigns of candidates for election to public office; and that these uses, and the use of a portion of the "dues and fees" in connection with the death benefit system of

the Brotherhood of Railway Clerks, were not reasonably necessary or related to collective bargaining.

Upon the verdict, the following judgment was entered:

"Now, Therefore, It Is Ordered, Adjudged and Decreed that the defendants, and each of them, are hereby restrained and enjoined from placing any compulsion of any nature upon the plaintiffs, individually named as such in the caption of this case, in the course of their employment with the Defendant Railway Company, whereby they, the said plaintiffs, against their free will and choice would be required to join the Defendant Unions, or conform to any rules or disciplines of Defendant Unions, or pay money to said Unions, to wit, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the Brotherhood of Railway Signalmen of America.

"This Order, however, is subject to the following conditions:

"The Defendant Unions shall be permitted, upon proper notice, to present proof to the Court, not conflicting or inconsistent with the findings of the jury as hereinbefore recited, as to what portion of the periodic dues, initiation fees and assessments, which they desire to collect from the plaintiffs, will be reasonably necessary and related to collective bargaining between the defendant Unions and the plaintiffs' employer, the Defendant Railway Company, and upon making of such proof, not conflicting or inconsistent with the findings of the jury as hereinabove recited, to the satisfaction of the Court, this Order shall have no application or force or effect with respect to such portion of such periodic dues, initiation fees or assessments or the imposition and collection thereof under the terms of the contract referred to in the pleadings.

"The cause is therefore retained for such further hearings, either with or without a jury, and such further Orders as may seem appropriate should the proof referred to above be offered by the defendants.

"It Is Further Ordered that the Defendants pay the costs of this action."

The Brotherhood of Railway Clerks and the Brotherhood of Railway Signalmen excepted and appealed. When used in the opinion, "defendant Unions" refers only to the two applicants.

Blakeney & Alexander for plaintiffs, appellees.

Schoene & Kramer and J. B. Craighill for defendant Unions, appellants.

Bobbitt, J. Decision depends upon whether the evidence, considered in the light most favorable to plaintiffs, was sufficient to withstand the motion by defendant Unions for judgment of involuntary nonsuit.

Upon adoption of the Railway Labor Act, 20 May, 1926, 44 Stat. 577, Congress "made a fresh start toward the peaceful settlement of labor disputes affecting railroads." Virginia Ry. Co. v. System Federation No. 40, 300 U.S. 515, 57 S. Ct. 592, 81 L. ed. 789. This Act, as amended, is now codified as 45 USCA §§ 151 et seq. The basic principle underlying this Act is embodied in these provisions: "Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this chapter." 45 USCA § 152, Fourth. In the case cited, the Supreme Court of the United States sustained the constitutionality of the Railway Labor Act, both under the commerce clause and as to the Fifth Amendment, in relation to the requirement that the carrier treat exclusively with the employees' duly chosen bargaining representative.

Defendant Unions, duly chosen as such by the majority, are the exclusive bargaining representatives of all employees of the respective crafts or classes to which plaintiffs belong. Under the collective bargaining agreements between defendant Unions and Southern, plaintiffs acquire and have the same rights in respect of seniority, rates of

pay, rules, working conditions, etc., under their employments by Southern, as Southern's employees who become and are members of defendant Unions by their free choice.

The validity of the Union shop agreement of February 27, 1953, depends solely upon the authority granted by the Union Shop Amendment to the Railway Labor Act. Act of Congress, January 10, 1951, 64 Stat. 1238, 45 USCA § 152, Eleventh, hereafter called Union Shop Amendment. The agreement contains provisions expressly authorized by the Union Shop Amendment.

Absent the Union Shop Amendment, the union shop agreement would be void under the North Carolina "Right to Work" Act, Session Laws of 1947, Ch. 328, GS 95-78 et seq.

In Hudson v. R.R., 242 NC 650, 89 SE 2d 441, *certiorari* denied, 351 U.S. 949, 100 L. ed. 1473, 76 S. Ct. 844, the action was to restrain the carrier and the unions *from entering into* a proposed union shop agreement as permitted, but not required, by the Union Shop Amendment. Plaintiffs therein based their case primarily upon the North Carolina "Right to Work" Act. The constitutional questions now raised were not presented.

In Hudson, it was noted that the North Carolina "Right to Work" Act superseded the common law rule approved by this Court in S. v. Van Pelt, 136 NC 633, 49 SE 177, 68 L.R.A. 760, 1 Ann. Cas. 495. The Northern Carolina "Right to Work" Act was recognized as valid and in full force and effect "except to the extent Congress, in enacting labor legislation related to interstate commerce, has pre-empted the field"; and that the Union Shop Amendment, which relates only to labor relations between carriers and their employees, was in conflict with and superseded the North Carolina "Right to Work" Act. Reference to the opinion will disclose the several questions then considered and discussed.

Prior to Hudson, the Supreme Court of Nebraska decided Hanson v. Union Pacific Railroad Co., 160 Neb. 699, 71 NW 2d 526, an action to restrain the carrier and the Unions from *putting into effect* provisions of union shop agreements containing provisions expressly authorized by the Union Shop Amendment.

For reasons fully set forth by Justice Wenke, the Supreme Court of Nebraska held that the enforcement of contract provisions authorized by the Union Shop Amendment would deprive plaintiffs of specific constitutional rights, to wit: (1) ". . . the freedom of association, the freedom to join or not to join in association with others for whatever purposes such association is lawfully organized, . . ." guaranteed by the First Amendment; and (2) due process of law, guaranteed by the Fifth Amendment, in that, by requiring an employee who does not desire to join a union to pay initiation fees, dues and assessments, such employee "is required to pay for many things besides the cost of collective bargaining," that is, "all of the varied objects and undertakings in which such labor organizations are or may become engaged." The opinion states: ". . . it is apparent that some of these labor organizations advocate political ideas, and support political candidates, and advance national economic concepts which may or may not be of an employee's choice."

In Hudson, we expressly reserved the constitutional quetsions decided by the Supreme Court of Nebraska.

In Railway Employes' Dept. A. F. L. v. Hanson, 351 U.S. 225, 100 L. ed. 1112, 76 S. Ct. 714, the United States Supreme Court reversed the Nebraska decision. Plaintiffs, citing Looper v. Georgia, Southern & Florida Railway Co., 213 Ga. 279, 99 SE 2d 101, contend the questions now presented were not decided but reversed. Defendant Unions contend the identical questions were considered and decided. If the contention of defendant Unions is correct,

the decision of the United States Supreme Sourt, referred to hereafter as Hanson, controls.

Mr. Justice Douglas, referring to the decision of the Supreme Court of Nebraska, said: "It held that the union shop agreement violates the First Amendment in that it deprives the employees of their freedom of association and violates the Fifth Amendment in that it requires the members to pay for many things besides the cost of collective bargaining. The Nebraska Supreme Court, therefore, held that there is no valid federal law to supersede the 'right to work' provision of the Nebraska Constitution."

Before considering further what was decided in Hanson, an analysis of plaintiffs' action seems appropriate.

Plaintiffs have made no tender of dues, initiation fees or assessments. The Hudson and Hanson decisions determined adversely to plaintiffs the cause of action originally alleged. See Allen v. Southern Ry. Co., 114 F. Supp. 72. All original defendants were restrained by interlocutory orders until February 1, 1957, on the basis of facts originally alleged. Allegations that enforcement of the union shop agreement would deprive them of constitutional rights guaranteed by the First, Fifth and Ninth Amendments were first made in amendment to complaint filed February 1, 1957; and on the basis of these new allegations all original defendants were restrained by interlocutory order until the trial at April Term, 1958.

Whatever the legal relationship between plaintiffs, a minority of the employees of their respective crafts or classes, and defendant Unions, their duly chosen collective bargaining representatives, such relationship is involuntary on the part of plaintiffs. They do not want defendant Union's to represent them. They do not want to become members of defendant Unions. They do not want to pay any amount as dues, initiation fees or assessments. Finally, if required to pay any amount, they insist that no part

thereof shall be used, directly or indirectly, except for purposes reasonably necessary or related to collective bargaining. In short, they are completely at cross-purposes with defendant Unions.

Plaintiffs' cause of action, under amended complaint, proceeds on the premise that if plaintiffs can show that defendant Unions use *any* portion of the dues, initiation fees or assessments, directly or indirectly, for *any* purpose not reasonably necessary and related to collective bargaining, the enforcement of the union shop agreement should be restrained until such time as defendant Unions establish precisely *what* portion of the dues, etc., is used solely for purposes reasonably necessary and related to collective bargaining. The trial proceeded, issues were submitted and judgment entered in accordance with plaintiffs' said premise.

The judgment, based on the jury's findings, restrained the enforcement of the union shop agreement until such time as defendant Unions establish "what portion of the periodic dues, initiation fees and assessments, which they desire to collect from the plaintiffs, will be reasonably necessary and related to collective bargaining between the defendant Unions and the plaintiffs' employer, . . ." At the contemplated further hearing, the determination of what expenditures by defendant Unions are reasonably necessary or related to collective bargaining is not limited to expenditures for uses challenged in the amended complaint.

It is noted that the judgment is determinative only as between named plaintiffs and defendant Unions. If persons hereafter employed by Southern should seek similar relief, their status must be determined in subsequent actions.

Considering the testimony and documents in the light most favorable to plaintiffs, there was evidence tending to establish the facts narrated below.

The Brotherhood of Railway Clerks has in excess of 300,000 members in the United States and Canada. Its organizational structure consists of the Grand Lodge, system boards of adjustments and local lodges. The initiation fee, applicable to members of the Charlotte Local Lodge, is $10.00, of which $5.00 is paid to the Grand Lodge; and the dues are $2.25 per month, of which $1.00 per month is paid to the Grand Lodge.

The Brotherhood of Railway Clerks has a North Carolina Legislative Committee composed of a representative from each (North Carolina) local lodge. This committee selects a legislative representative. A local lodge, out of the portion of monthly dues retained by it, pays 10¢ per month per member to this Legislative Committee. The function and responsibility of the legislative representative is to keep in touch with all North Carolina legislation affecting the interests of the Brotherhood and of its members.

The Grand Lodge of the Brotherhood of Railway Clerks has a full time representative in Washington who observes legislative proceedings of particular interest to the Brotherhood and its members, such as legislation relating to railroad retirement, railroad unemployment insurance, railroad labor relations, and contacts members of Congress with reference thereto.

The Brotherhood of Railway Clerks publishes semi-monthly and distributes to each member an official publication known as "The Railway Clerk." It also publishes monthly "The Grand President's Bulletin" which is distributed to Brotherhood officials. If and when a local lodge or system board of adjustment wishes to subscribe to "Labor," a weekly newspaper referred to below, the Grand Lodge contributes 20¢ towards the costs of each subscription.

The Brotherhood of Railway Signalmen has approximately 16,000 members. Its organizational structure con-

sists of the Grand Lodge, system general committees and local lodges. The initiation fee is $5.00, of which $1.50 is paid to the Grand Lodge; and the dues are $3.33 per month, of which $1.50 per month is paid to the Grand Lodge.

The Grand Lolge of the Brotherhood of Railway Signalmen sets aside a legislative fund from which it pays legislative representatives in the several states.

The Grand Lodge of the Brotherhood of Railway Signalmen publishes monthly and distributes to its members a publication known as "The Signalmen's Journal." Subscriptions to "Labor" are entered on an individual or subordinate lodge basis. The Grand Lodge contributes no part of the subscription price.

Each of the defendant Unions is one of several owners of the society which publishes "Labor." Presently, this society's revenue consists solely of subscriptions and income from investments. In 1956 and 1957, George M. Harrison, Grand President of the Brotherhood of Railway Clerks, served on its board of directors. In special editions of "Labor" published in 1954 and 1956, distributed in areas where political campaigns were in progress, this newspaper advocated by name and opposed by name the particular candidates involved. Generally, this newspaper expresses its views as to candidates and as to legislation.

There is a voluntary group, composed of the heads of several railway labor unions, known as the Railway Labor Executives Association. This group meets ten or twelve times a year "for the purpose of advancing the mutual organizational interests, in handling common problems dealing with collective bargaining and such matters as that." Each of defendant Unions contributes thereto from its Grand Lodge funds. Occasionally, the Railway Labor Executives Association makes contributions to Railway Labor's Political League, referred to below.

Railway Labor's Political League is an unincorporated group composed of the chief executive officers of most of

the railway labor unions. It maintains an office in Washington, D. C., staffed by its secretary and one clerical employee. "Generally, the function of it is to carry on political educational work and to collect voluntary contributions from railway employees and other citizens to assist in electing candidates that favor the same general objectives that railroad employees desire to see accomplished in the Federal Congress." Railway Labor's Political League makes contributions to support the campaigns of particular candidates and to influence legislation. This particular group was formed after the 1947 Amendment to the Corrupt Practices Act.

Each of defendant Unions is a member of the American Federation of Labor, Congress of Industrial Organizations Federation, hereafter called AFL-CIO. Harrison is a member of its executive counsel and of the governing board of its committee on political education known as C.O.P.E. AFL-CIO is a voluntary, unincorporated association, composed of "about 138 national and international Unions." "There are roughly 12½ million members, maybe 13 million, in the Unions that are affiliated with AFL-CIO." Each of defendant Unions pays substantial sums from its Grand Lodge funds to the AFL-CIO. In each instance, the amount so paid is the aggregate of a per capita tax of so much per member as determined by the AFL-CIO Convention. On this basis, the amounts so paid by the Brotherhood of Railway Clerks are quite large. AFL-CIO expends its funds to promote various projects and causes in which it is interested.

The Grand Lodge of the Brotherhood of Railway Clerks, out of its portion ($5.00) of each initiation fee, allocates 90¢ to its Death Benefit Department Fund; and out of its portion ($1.00) of the monthly dues, allocates 30¢ per month to its Death Benefit Department Fund. The Constitution of the Grand Lodge of the Brotherhood of Railway Clerks (Article 27), which is a part of the record

herein and was a part of the record before the Supreme Court of the United States in Hanson, so provides. Thus, in respect of the portion of dues and fees allocated to the Death Benefit Department Fund, the facts established herein are the identical facts established in Hanson.

Referring again to the Constitution of the Grand Lodge of the Brotherhood of Railway Clerks, part of the record in Hanson, Article 23 thereof deals generally with the subject of "Legislation," and specifically (Section 1) with the appointment of "National Legislative Counsel," and (Section 3) with the formation of "State or Provincial Legislative Committees." Section 2 provides: "The Grand President in consultation with the Grand Executive Council, in absence of Convention action, shall determine the policy of the Brotherhood with respect to Federal Legislation." Section 8 provides: "The State or Provincial Legislative Board shall elect a State or Provincial Legislative Chairman. The Legislative Chairman shall, when authorized by the Legislative Board, devote such time as may be necessary at the State or Provincial Legislatures when same are in session. He shall peruse all bills, memorials and resolutions introduced in the legislature and oppose all legislation detrimental to the welfare of the Brotherhood; he shall have introduced and support such bills and resolutions as advances the welfare of the members of the Brotherhood, subject to the policy of the Brotherhood as designated by the Grand President, and when such policy has been agreed upon, and approved by the Grand President it shall become the State or Provincial legislative program."

The record before the Supreme Court of the United States in Hanson includes portions of the constitutions of several other unions which were defendants therein, which contain similar provisions.

The appellees in Hanson, in their brief, appear to have drawn into sharp focus the matters now pressed by plain-

tiffs. Referring to money collected by the defendant Unions as initiation fees and due, they asserted: "They spend it for political purposes . . . They spend it to pay for the publication of special editions of 'Labor' to help elect or defeat candidates for the United States Senate, to pay for television programs to help elect Democrats to Congress or to state offices, to pay the salaries and expenses of lobbyists, . . .". Again: "They spend it for life insurance, disability, death or funeral benefits for their members, which the involuntary member may not want or which he may prefer to take out with a company of his own selection."

What the Supreme Court of the United States decided in Hanson, and the import of the language in the opinion of Mr. Justice Douglas, must be considered in the light of the record before it and the contentions presented.

In closing the opinion, Mr. Justice Douglas said:

"It is argued that compulsory membership will be used to impair freedom of expression. But that problem is not presented by this record. Congress endeavored to safeguard against that possibility by making explicit that no conditions of membership may be imposed except as respects 'periodic dues, initiation fees, and assessments.' (If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case.) For we pass narrowly on § 2, Eleventh of the Railway Labor Act. We only hold that the requirement for financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments. We express no opinion on the use or other conditions to secure or maintain membership in a labor

organization operating under a union or closed shop agreement."

Earlier in the opinion, Mr. Justice Douglas, while recognizing its power to do so, emphasized that it was for Congress to determine whether authority for union shop agreements should be granted. Thereafter, Mr. Justice Douglas said:

"To require, rather than to induce, the beneficiaries of trade unionism to contribute to its costs may not be the wisest course. But Congress might well believe that it would help insure the right to work in and along the arteries of interstate commerce. No more has been attempted here. The only conditions to union membership authorized by § 2, Eleventh of the Railway Labor Act are the payment of 'periodic dues, initiation fees, and assessments.' The assessments that may lawfully imposed do not include 'fines and Penalties.' (The financial support required relates, therefore, to the work of the union in the realm of collective bargaining.) No more precise allocation of union overhead to individual members seems to us to be necessary. The prohibition of 'fines and penalties' precludes the imposition of financial burdens for disciplinary purposes. (If 'assessments' are in fact imposed for purposes not germane to collective bargaining, a different problem would be presented.)"

In the above quotations, we have indicated by parentheses the words relied upon by plaintiffs to support the contention that the Supreme Court of the United States did not pass upon the questions now raised. Whatever our views, if the questions now raised were originally for our decision, we are of opinion and hold that the very questions now raised by plaintiffs were before the Court and decided in Hanson; and that the words upon which plaintiffs rely, when read in context, do not support their contention.

In the first quotation, the requirement upheld is "for financial support of the collective-bargaining agency by all who receive the benefits of its work . . ." We do not think this language conveys the idea that the financial support required is limited to such expenditures as the collective bargaining agency incurs while engaged in the negotiation and servicing of collective bargaining agreements. Rather, it indicates that the required financial support embraces all activities of the collective bargaining agency reasonably related to its maintenance as an effective bargaining representative. If our interpretation is correct, it would seem that, in the discharge of its obligations, the collective bargaining agency would be expected to keep in touch with and make known its findings in respect of legislation tending to promote or to impair its collective bargaining position or tending to enhance or defeat the interests of those whom it represents. In so doing, they would do neither more nor less than the representatives of carriers with whom they negotiate collective bargaining agreements.

This sentence appears in the second quotation: "No more precise allocation of union overhead to individual members seems to us to be necessary." We cannot dispel the impression that the meaning of this sentence is that the requirement that the unwilling members pay ordinary periodic dues and initiation fees for the support of their collective bargaining agency is a reasonable requirement and that no more precise allocation need be made. In this connection, it is noted that whatever small portion of the periodic dues and initiation fees might be traced, under the accounting practices of defendant Unions, to the uses challenged by plaintiffs, the evidence shows that the Brotherhood of Railway Clerks not only owns an office building but receives over $300,000.00 per year as income from investments. Obviously, no benefit would accrue to plaintiffs if, by a mere change in accounting practices, the income received solely from investments, rather than any

portion of the periodic dues and initiation fees, were expended for uses now challenged by plaintiffs.

There is no evidence that plaintiffs will be required to pay "assessments." The jury's findings refer to "dues and fees," not to "assessments." Defendant Unions, for some years, have made no assessments on their members. They make no demand on plaintiffs for the payment of any assessment. Whether plaintiffs would be required to pay an assessment as a condition of continued employment is not presented by this record. If and when either of defendant Unions should undertake to impose an assessment, plaintiffs' liability therefor would have to be determined in the light of all facts concerning such assessment.

As we interpret Hanson, the Supreme Court of the United States has decided that a requirement that plaintiffs pay the ordinary periodic dues and initiation fees uniformly required of all members does not violate either the First or Fifth Amendment. Since the constitutionality of the Union Shop Amendment has been expressly upheld, we need not discuss plaintiffs' general attack thereon predicated on the Ninth Amendment.

All that defendant Unions demand of plaintiffs is that they pay the ordinary periodic dues and initiation fees uniformly required of all members. In all other respects, plaintiffs are free to speak and to act according to their own desires even if by so doing they speak and act at cross-purposes with defendant Unions.

As we interpret it, the questions reserved in Hanson would arise only if and when defendant Unions should undertake to deny membership or to terminate membership on account of some failure of plaintiffs to comply with the various regulations applicable to voluntary members, e. g., refusal to sign application blanks, failure to attend meetings, failure to speak or act in harmony with the policies and objectives of defendant Unions, failure to pay

an exaction imposed by way of penalty or for disciplinary purposes, etc. If defendant Unions, notwithstanding the tender by plaintiffs of ordinary periodic dues and initiation fees, refuse to recognize plaintiffs as members or deny to them any privilege to which a member is entitled, it would seem that by such conduct they would relieve plaintiffs from further obligations under the union shop agreement. It is quite possible that occasions will arise where defendant Unions will prefer to forego the collection of periodic dues and initiation fees rather than have nonconformists as members of their organizations.

It is noted that plaintiffs do not allege or contend that defendant Unions made unlawful expenditures in violation of the federal Corrupt Practices Act. USCA, Title 18, § 610; U. S. v. International Union, 352 U.S. 567, 1 L. ed. 2d 563, 77 S. Ct. 529, and cases cited. Nor do plaintiffs allege or contend that any expenditure made by defendant Unions was otherwise than in accordance with the wishes and will of the majority of their members.

As indicated, our decision is based upon our interpretation of what the Supreme Court of the United States decided in Hanson. Whether our interpretation or that made in the Looper case, supra, is correct, will be resolved in due course.

Pennsylvania R. Co. v. Rychlik, 352 U.S. 480, 1 L. ed. 2d 546, 77 S. Ct. 421, decided subsequent to Hanson, is predicated upon the validity of the Union Shop Amendment. However, it relates to a union shop agreement involving *operating* employees; and, since the questions decided were quite different from those presented in Hanson and herein, no discussion of the cited case is appropriate.

This action appears to be an incident in the continuing controversy between those who advocate the principles embodied in the Union Shop Amendment and those who advocate the principles embodied in state "Right to Work"

statutes and constitutional provisions. It is plain that the Union Shop Amendment constitutes plaintiffs' basis grievance, not the inconsequential sums they are required to contribute to the support of their collective bargaining representative. Southern's answer herein discloses that it shares the views expressed and pressed by plaintiffs. Suffice to say, we express no opinion as to the merits or demerits of the policy embodied in the Union Shop Amendment.

Under the evidence presented, we conclude that plaintiffs were not entitled to the injunctive relief demanded and that the court erred in overruling the motion by defendant Unions for judgment of involuntary nonsuit.

Reversed.

ALLEN v. R. R.

PARKER, J., dissenting. The first five issues submitted to the jury, and their answers thereto are as follows:

"1. Do the defendant Unions use dues and fees which they collect from railroad employees in support of or opposition to legislation which is not reasonably necessary or related to collective bargaining?

Answer: YES.

"2. Do the defendant Unions use dues and fees which they collect from railroad employees to influence votes in elections to public office?

Answer: YES.

"3. If so, is the same necessary or reasonably related to collective bargaining?

Answer: No.

"4. Do the defendant Unions use dues and fees which they collect from railroad employees to make contributions to the campaigns of candidates for election to public office?

Answer: Yes.

"5. If so, is the same necessary or reasonably related to collective bargaining?

Answer: No.

As I read the record, there was sufficient evidence produced by the plaintiffs to carry the case to the jury, and to permit them to answer the issues as they did. According to the jury verdict there is no question but that the defendant unions use dues and fees which they collect from their members to support or to oppose legislation not related to collective bargaining, to influence votes in election to public office, and to make contributions to the campaigns of candidates for election to public office. And according to the provisions of a contract between the Southern Railway Company and the defendant unions, an employee of the Southern Railway Company must join the defendant unions and pay the dues and fees demanded, or be discharged.

The fundamental issue is, can the defendant unions in a free United States, whose supreme national law is set forth in the United States Constitution, force an employee of the Southern Railway to join their unions, and compel him financially to support and contribute to a political party and candidates, whose principles, projects, policies or programs he does not believe in, or may abhor, and does not want, and to contribute to support or oppose legislation not related to collective bargaining regardless of his views, or be discharged from his employment?

The specific and narrow question before us is the use made of the dues and fees demanded by the defendant unions, which plaintiffs must pay or be discharged. I take my stand not upon the so called "right to work" statute of North Carolina, but upon the United States Constitution.

Freedom of association, of thought and of speech is protected by the First Amendment to the United States Constitution against any action by Congress. American Communications Asso. v. Douds, 339 U.S. 382, 94 L. Ed. 925; Lincoln Fed. L. U. v. Northwestern I. & M. Co., 335 U.S. 525, 93 L. Ed. 212, 6 A. L. R. 2d 473; Thomas v. Collins, 323 U.S. 516, 89 L. Ed. 430.

The right to work is protected by the Fifth Amendment to the United States Constitution. "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure." Truax v. Raich, 239 U.S. 33, 60 L. Ed. 131. "It is said that the right to work, which the Court has frequently included in the concept of 'liberty' within the meaning of the Due Process Clauses (citing authority) may not be denied by Congress." Railway Employes' Dept. A. F. L. v. Hanson, 351 U.S. 225, 100 L. Ed. 1112.

The Fifth Amendment, which relates to governmental action, federal in character, not to action by private persons, provides that no person shall be deprived of his property without due process of law. Corrigan v. Buckley, 271 U.S. 323, 70 L. Ed. 969. In my opinion, it is not within the concept of due process to compel a person to contribute dues and fees from his earnings for the purpose of promoting political and idealogical ends to which he is opposed and of electing men to public office whose purposes he may distrust, and if he does not so contribute to discharge him from his job with loss of seniority. To hold that this can be done would be a taking of a portion of a person's earnings without due process of law.

In Railway Employes' Dept. A. F. L. v. Hanson, *supra*, the validity of a closed shop contract executed under Section 2, Eleventh of the Railway Labor Act, as amended (64 Stat. 1238) was upheld. However, the Court used this language: "If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing idealogical conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case." The question reserved is the very quesiton presented here for decision.

In my opinion, no Act of Congress, no governmental action, federal in character, can compel a person to contribute dues and fees from his earnings to a labor union for the ends found by the jury's verdict, so long as the First and Fifth Amendments to the United States Constitution remain a part thereof guarding him from such an unwarranted invasion of his personal and property rights. I am fortified in my opinion by the fact that the Supreme Court of Georgia in Looper v. Georgia, Southern & Florida Railway Co., 213 Ga. 279, 99 S.E. 2d 101, which was decided 10 June 1957, more than a year after the decision in the Hanson case, has expressed a similar opinion on substantially similar facts averred in a petition, stating that the question was expressly reserved in the Hanson case. If a member of a labor union desires to make a *voluntary contribution* for such purposes, he is free to do so.

If a political party dominant in the Congress should enact a statute requiring every federal employee to join a union, and compelling each one to contribute from his salary dues and fees to support the ideas, purposes and candidates of that party, and if he did not pay such dues and fees, he should be discharged from his employment, can there be any doubt that the exaction of such dues and fees for such support would be held unconstitutional? A holding to the contrary would destroy constitutional government in this nation.

I vote to uphold the verdict and judgment of the trial court.

APPENDIX C

SUPREME COURT OF NORTH CAROLINA

Spring Term, 1962

No. 249-Mecklenburg

ANNA MAE ALLEN, ET AL., *Plaintiffs*,

v.

SOUTHERN RAILWAY COMPANY, ET AL., *Defendants*.

On petition to rehear.

This action was instituted by named non-union employees of Southern Railway Company for injunctive relief. Plaintiffs allege that they were notified they would be discharged from their jobs if they did not join one of defendant Unions and pay to it fees, dues and assessments, and that this notice was given them pursuant to provisions of a Union shop agreement between the Railway Company and defendant Unions. The provisions of the agreement in question are authorized by the Amendment to the Railway Labor Act of 10 January 1951 (64 Stat. 1238, 45 USCA, § 152, Eleventh). Plaintiffs seek generally to restrain collection from them of any dues, fees or assessments not reasonably necessary and related to collective bargaining.

Blakeney, Alexander & Machen for plaintiffs, appellees.

Schoene & Kramer and J. B. Craighill for defendant Unions, appellants.

PER CURIAM. This case was before this Court at the Fall Term 1958. An opinion, delivered by Bobbitt, J., for a majority of the Court was filed at the Spring Term 1959. Allen v. R. R., 249 N. C. 491, 107 S.E. 2d 125. That opinion gives an adequate summary of the pleadings, evidence, issues of fact, prelminary proceedings, and judgment in the trial court. A repetition of these matters and a re-

statement of the legal questions involved are unnecessary here.

After our decision at the Spring Term 1959, plaintiffs, in apt time, filed a petition to rehear. The petition was allowed on 20 May 1959 by the two Justices to whom it was referred, but the Court deferred rehearing pending decision on appeal in a Georgia case originally captioned Looper v. Georgia, Southern & Florida Railway Co., 213 Ga. 279, 99 S.E. 2d 101, and later captioned International Association of Machinists v. Street, 215 Ga. 27, 108 S.E. 2d 796.

The Unions, under 28 USCA, s. 1257 (1), appealed the latter decision of the Supreme Court of Georgia to the Supreme Court of the United States which, on October 12, 1959, noted probable jurisdiction. 361 U.S. 807, 4 L. Ed. 2d 54, 80 S. Ct. 84. The cause was argued twice in the Supreme Court of the United States, having been reargued on January 17 and 18, 1961. It was decided June 19, 1961. International Association of Machinists v. Street, 367 U.S. 740, 6 L. Ed. 2d 1141, 81 S. Ct. 1784.

After the decision of the Supreme Court of the United States in the Street case, a rehearing of our former decision, by oral arguments and by briefs, was held.

Before a decision acceptable to and in accordance with the opinion of a majority of this Court was reached, Winborne, C. J., retired from the Court, Denny, J., was elevated to Chief Justice, and Sharp, J., was appointed to fill the vacancy on the Court. Justice Sharp, formerly a Superior Court Judge, is disqualified and declines to take part in the consideration and decision of this appeal for the reason that she presided at a hearing entered an interlocutory order in this case at the Superior Court level.

This leaves the Court evenly divided. Three Justices are of the opinion that the judgment of the Superior Court

should be affirmed. Three are of the opinion that there was error in the trial below.

The Court being equally divided, the judgment below is affirmed. The judgment appealed from stands, but not as as precedent. Schoenith v. Realty Co., 244 N. C. 601, 94 S.E. 2d 592; Ward v. Odell, 126 N. C. 946, 36 S.E. 194.

Affirmed.

SHARP, J., took no part in the consideration of this appeal.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES AND BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA,

Petitioners

vs.

ANNA MAE ALLEN, ET AL,

Respondents

On Petition For a Writ of Certiorari to the Supreme Court of North Carolina

BRIEF FOR THE RESPONDENTS IN OPPOSITION

WHITEFORD S. BLAKENEY

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North Carolina National Bank Building
Charlotte, North Carolina

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QUESTION PRESENTED

It having been established in this case, and being no longer in contest, that the respondent employees will be subjected to compulsion such as was adjudged unlawful in the case of *International Association of Machinists vs. Street* unless they are protected therefrom, is the remedy which has been granted them fair and equitable to all concerned and free of the essential defects which this Court found in the *Street* judgment?

STATEMENT OF THE CASE

While this case is, upon the merits, closely analogous to *International Association of Machinists vs. Street*, 367 U. S. 740, there are a number of respects in which it presents and supports the position of plaintiff employees even more strongly than did the *Street* case.

The present case was tried not upon stipulations of evidence, as was the *Street* case, but by ordinary procedure and the presentation of evidence and testimony through examination and cross examination before Judge and jury — a jury composed, incidentally, as the Trial Court record shows, of varied and representative membership, Union and non-Union, men and women, white and colored. Thus, the findings of fact in this case were made not by the Court but by the jury, upon issues submitted to them in the usual manner.

The defendant Unions, now petitioners, do not deny that the plaintiff employees, now respondents, — except for such protection as they obtain through this litigation — will be compelled, against their will, to pay dues and fees to the defendant Unions or else be discharged from their jobs of long standing with the Railway Company (R. 13, 18, 121-122).

Likewise, the Union petitioners do not now question that it was in this case adequately established that the dues and fees compulsorily collected by the petitioners are in part used by them to influence votes in public elections — to elect certain candidates to public office and to defeat other candidates, and to procure the enactment of certain

legislation and the defeat of other legislation. There are, for example, in the record in this case twenty-nine pages of exhibits (R. 303-332) setting forth by dates, names and individual amounts, literally hundreds of thousands of dollars of contributions paid to candidates whom the Union leaders selected as the recipients of such largess.

There is here further voluminous evidence, such as: — copies of thirty-six special editions (R. 282, 300) of a publication partly paid for out of compulsory dues money collected from employees (R. 132), espousing and pressing the election campaigns of selected candidates for the House of Representatives and Senate of the United States, and each such "special" edition running to "something less than a million copies" (R. 247) — also, for example, a "report of the AFL-CIO Executive Council, 1957" showing expenditures, likewise out of funds derived in part by defendant Unions from employees' compulsory dues payments, of $92,343.01 and $139,071.74 for "legislative" purposes (R. 149), $232,860.72 and $618,036.12 for "international affairs" (R. 150), $352,372.18 and $365,722.04 for political "education" (R. 150), and disclosing the use of such funds to procure the enactment or defeat of legislation in such fields as "The Bricker Amendment," "Disclosure of FBI Files," "Enemy Alien Assets," "Juvenile Delinquency," "Hell's Canyon," "TVA" and "Pay Television" (R. 283-303).

From such evidence, and more of the same nature, the jury, upon the several issues submitted to them, specifically found that the petitioner Unions do use compulsorily collected dues and fees for political purposes not "necessary

or reasonably related to collective barganing." The Unions now make no contest with respect to any of these matters.

Nor do they question that this Court decided in the *Street* case that compulsion upon employees, requiring them to pay money to labor Unions, against their will, for purposes "other than defraying the costs of collective bargaining" is not supported or sanctioned by Federal law, and that such compulsion upon the respondent employees, as established in this case, is therefore not permissible.[1]

Yet the plea of the petitioners now seems to be that no matter if such unlawful compulsion be imposed, or is about to be imposed, upon these employees, they should not be allowed to obtain from any Court any equitable or injunctive relief. This contention the petitioners supplement with the further argument that the respondent employees should not have any relief in any event because at some time, unspecified, they should have "advised" the Unions as to which Union-supported political candidates and causes were objectionable to them.

[1] It is not questioned either that this compulsion upon these employees comes about by reason of Federal Statute, the 1951 Amendment to the Federal Railway Labor Act, 45 U.S.C.A. 152, Eleventh. It was so held in *Railway Employees' Department vs. Hanson*, 351 U. S. 225. Indeed, North Carolina having a "right to work" statute which protects all employees within its bounds from such compulsion, we have here a situation in which the exercise of Federal power is clearly the effective factor — it being only the affirmative action of the Federal statute striking down the shield of the North Carolina statute which makes possible the placing of the compulsion in question upon these respondents.

ARGUMENT

I. The Judgment Rendered In The Court Below Is Fair, Equitable And Appropriate And Is Free Of The Errors Which This Court Found In The Street Judgment.

The question of proper remedy is obviously the only area in which the petitioning Unions now consider that they have any opportunity of further contest in this case. It is also obvious that within this remaining area, they still hope to win this case, that is, by inducing this Court so to reshape the respondents' remedy as to render meaningless the respondents' rights.

The respondents' rights have been established. It has been adjudged by the Courts below, in harmony with the ruling of this Court in the *Street* case, that the Unions are about to impose upon the respondents a compulsion which is unlawful, that is, that the Unions, unless prevented from doing so, will compel the respondents as a condition of employment to pay money to the Unions which will be in part used for purposes "other than defraying the costs of collective bargaining." It having been adjudicated, consistently with this Court's ruling, that such compulsion upon the respondents will not be lawful and that the respondents have a right to be protected from it, the question then is — what Court action is appropriate to protect the respondents.

It is submitted that a fair and reasonable answer is to be found in separating the money which the respondents can lawfully be compelled to pay, namely, that portion which is used for "defraying the costs of collective bargaining," from the money which the respondents cannot lawfully be compelled to pay, namely, the portion which

is used for other purposes, such as the promotion of political causes and candidates. It is further submitted that the burden of separating these two portions, in the first instance at least, should be upon the Unions — they being the only persons or parties involved who know, or have the facts and information enabling them to know, what these respective portions are.

Several years before this Court came to this problem in the *Street* case, the Trial Court in the present case foresaw the difficulties which might arise on this matter of remedy and undertook to frame a judgment which would deal fairly with the interests of all concerned. The respondents believe that this judgment will now recommend itself to this Court as reasonable and proper upon the facts of this case — and as one which avoids the features that this Court found objectionable in the *Street* case.

It will be remembered that in the *Street* case Justice Brennan, speaking for himself, Chief Justice Warren, Justice Clark and Justice Stewart, and likewise Justice Douglas and Justice Black considered that the judgment which had been rendered by the lower Court in that case was too broad, in that it ran "not only in favor of six protesting employees but also in favor of the class they represent." All six of these Justices agreed that relief should be confined to the individual plaintiffs. In the present case, by contrast, all element of "class action" was rigorously eliminated by the Trial Court. The judgment now before the Court does not purport to operate in behalf of anyone except the individuals who are actual plaintiffs in the case.

The Court will also recall that in the *Street* case, the lower Courts had "perpetually enjoined" the Unions and

the Railway Companies "from enforcing the said Union shop agreements," and had provided only that the defendants might petition for dissolution of such injunction upon a showing that they had ceased "engaging in the improper and unlawful activities" which had been found against them.

Justice Brennan, for himself, Chief Justice Warren, Justice Clark and Justice Stewart, expressed the view that:

> "Restraining the collection of all funds from the appellees sweeps too broadly . . ."
>
> . . .
>
> "Even though the lower Court decree is subject to modification upon proof by the appellants of cessation of improper expenditures, in the interim the prohibition is absolute against the collection of all funds. . . . The complete shutoff of this source of income defeats the congressional plan to have all employees benefited share costs 'in the realm of collective bargaining' . . ."
>
> . . .
>
> "We also think that a blanket injunction against all expenditures of funds for the disputed purposes, even one conditioned on cessation of improper expenditures, would not be a proper exercise of equitable discretion."

The four Justices joining in the main opinion therefore voted to remand the case to the Georgia Courts for the framing of a judgment "not inconsistent" with their opinion.

Justice Douglas, without whom the four Justices joining in the main opinion would not have constituted a majority, was reluctant to take this course, but said ". . . there is the practical problem of mustering five Justices for a judgment in this case. So I have concluded *dubitante* to agree to the one suggested by Mr. Justice Brennan. . . ."

It is thus apparent that the Court was casting about for a remedy which would not be illusory to the protesting employees nor too restrictive upon the Unions — a judgment which would effectively protect the employees' constitutional liberties but also leave the Unions free to function as bargaining agents for all employees and free also to engage in such other activities as they might see fit with funds from voluntary and non-protesting employees.

It is submitted that the judgment rendered in the present case accomplishes just such an accommodation of these conflicting interests. For here there is no injunction "restraining the collection of all funds" from the respondent employees. Under the present judgment the Unions can enforce the Union shop agreement against the respondents and collect money from the respondents. Neither is there any "blanket injunction against all expenditure of funds for the disputed purposes."

The judgment in the present case leaves the Unions completely free, both in their expenditure of funds for any purposes and in their collection of funds from anyone for any purposes — save only that in collecting from the individual respondents, the Unions are confined to that portion of the respondents' dues and fees which are "reasonably necessary and related to collective bargaining." And the judgment places the burden of showing in the first instance, what such portion is, upon the Unions,

where it reasonably ought to be — for they alone are in possession of the knowledge, facts and information as to what *they* do with the money."

> "It is a rule of practically universal acceptance that where a particular fact, necessary to be proved, rests peculiarly within the knowledge of a party, upon him the law casts the burden of proving such fact."

> "The rule as to the burden of proof is important and indispensable in the administration of justice. It consititutes a substantial right of the party upon whose adversary the burden rests; and therefore, it should be carefully guarded and rigidly enforced by the courts."
>
> *Skyland Hosiery Co. vs.*
> *American Railway Express Co.,*
> 184 N. C. 478, 480; 114 S. E. 823
>
> *Anthony vs. American Express Co.,*
> 188 N. C. 407, 410; 124 S. E. 753

It is submitted that the present judgment, avoiding as it does the faults which the Court found with the *Street* judgment, is a reasonable, fair and appropriate remedy within the framework of the analyses and lines of distinc-

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"The judgment in the present case also restrains the defendants from compelling the respondents "to join" or "conform to the rules or disciplines" of the Unions. It does not appear, however, that the Unions make any point of this, and indeed it seems to have been conceded on all sides, both in this case and in the *Street* case, that neither Section 2, Eleventh of the Railway Labor Act, nor the Union shop contract executed thereunder, purport to authorize any compulsion upon employees save only with respect to the payment of "periodic dues, initiation fees and assessments." For example, the petitioners in their brief (pp. 5-7) before the Supreme Court of North Carolina, declare this to be so. Thus it would seem that the Court below was clearly at liberty to enjoin compulsions other than monetary payments — they being prohibited by the North Carolina statute and not authorized by the Federal statute.

tion set forth in the opinions rendered by this Court in the *Street* case.

II. The Respondents Are Not To Be Deprived Of Their Remedy On Any Argument That They Should Have Specified To The Unions The Union-Supported Candidates And Causes To Which They, The Respondents, Were Opposed.

We turn now to the Unions' contention that the respondents should not have any relief because they have not notified the Unions specifically what Union-supported political candidates or causes they, the respondents, oppose.

As to this, the petitioners do not favor either the Court or the respondents with any explanation as to how the respondents could have given such notification, the record being replete (R. 95, 96-97, 98-99, 103-104, 106-107, 112, 117) that the Unions never made any information available even to their local leaders with respect to what political candidates or causes they supported. For example, the President of the Charlotte Local Lodge of the petitioner, Brotherhood of Railway Clerks, testified in this case (R. 106-107):

> "None of the officials above the Local Lodge ever informed the Local Lodge membership in any way as to what would be the policy of the national Union on any matters of legislation or political candidates."

Similarly, the Secretary-Treasurer of the same Local Lodge testified (R. 112, 117):

> "The North Carolina Legislative Committee of the Railway Clerks does not make any report to the Local

Lodge or to the membership of the Lodge as to what they are doing or what they have done, so far as I know, or what they aim to do."

"To the best of my knowledge I have never heard of the officials of the Grand Lodge or the System Board or the Legislative Committee in any way making it known to the Local Lodge or the Local membership what legislation or what candidates they, that is the officials, were going to favor or oppose."

Yet the petitioners suggest that the respondents, nonmembers and litigant adversaries of the Union, should know with particularity what political causes the Unions espouse and what candidates the Unions support.

Even more amazing is this contention seen to be when it is noted that the petitioners have heretofore vigorously asserted that they used no employee dues or fees "in any political activity." Thus, the petitioners declared in their brief (p. 7) before the Supreme Court of North Carolina, that:

"There is no evidence that either the Brotherhood of Railway Clerks or the Brotherhood of Railroad Signalmen engage in any political activity."

In the same brief (pp. 67, 68) they asserted that:

"There is no credible evidence that the defendant Unions used dues and fees to influence votes in elections to public office or for contributions to campaign funds."

> "The President of the Brotherhood of Railway Clerks, Mr. George M. Harrison, testified that his organization had not used funds to advance the candidacy or campaign of any person running for political office."

The jury having found upon the evidence precisely the contrary to be the truth, and their finding having been upon appeal examined and sustained, the petitioners now blandly shift to the contention that the respondents should have "advised" the Unions which of the Union-supported candidates and causes were objectionable to the respondents.

In arguing that employees can have no protection against the unlawful compulsion here involved, unless they furnish such specific "advice" to the Unions, the petitioners themselves offer no specifics as to when or how often such information would have to be supplied by the employees to the Unions. Should such particularities of protest be brought forward at each dues paying time and each time the Unions espouse a new cause or candidate anywhere in the Nation? And, again, how is any of this to be done by employees when the Unions give them no information as to their candidates or causes but, on the contrary, solemnly avow that they have none?

It would seem unnecessary, however, to pursue the petitioners into the absurdities of their position. What the respondents did here in the way of protest was to make known repeatedly and unmistakably that they objected to the Unions' collecting and spending any money of theirs on political causes or candidates chosen or selected by the Unions, instead of by the respondents personally and individually. This is the only sort of protest the re-

spondents, as a practical matter, could have made, and there is nothing in common sense or equity or in the decision of this Court in the *Street* case that requires more than this.

The respondents testified, for example:

Meriam P. Thompson (R. 39-41): — "I am opposed to being required to pay money each month to a labor Union, which the Union may use for purposes upon which the Union decides."

"I think every American has a right to choose for himself what he wants to do with his money he earns for himself, with his own hands, without having to go through a Union to do it."

"The laws which the Union might support or which the Union might oppose to which I object would be the right-to-work law for one thing, because I am in favor of the right-to-work law and I am sure the Unions are not. Another law would be part of the Railway Labor Act, specifically what we are here in Court fighting today. That is the Union shop agreement provisions of the Railway Labor Act. Those two laws specifically are the ones I have in mind."

Craven Smith (R. 41-43): — "Q If the evidence in this case, Mr. Smith, should show that the Railroad Unions require employees of the Southern Railway to pay money to them in order for those employees to keep their jobs, and that the Railway Unions then take that money and use part of it to

support certain legislation and to oppose other legislation, to support and influence campaigns for certain political candidates and elect certain candidates and to defeat other political candidates, what is your position with respect to such use of dues money taken from you against your will?"

"A. I am definitely opposed to such activity. I am opposed to such use of my money because it strikes at the foundation of our American life. I think every American should be free to join what he pleases and use the money that he earns the way that he wants to."

. . .

"I know that North Carolina has the right-to-work law. I am in favor of that law. I am not in favor of having any money taken from me against my will and used to repeal that law. I know that the 1951 Amendment of the Federal Railroad Labor Act made the Union shop agreement possible. I am not in favor of that law but I am against it. I am not agreeable to having money taken from me against my will and used to maintain that law in effect."

George E. Atwell (R. 46-47): — ". . . I certainly am opposed to them [the Unions] advocating or endorsing candidates. . . . I would say that when the Unions endorse candidates who are in favor of continuing that portion of the Railway Labor Act which permits the Union shop, I am opposed to that."

Harold B. Hackney (R. 89-90): — "Q. Now, Mr. Hackney, if the evidence in this case should establish, or tend to establish, that the moneys which would be required to be paid by an employee of the Southern

Railway in a position such as yours under the Union shop agreement, moneys required to be paid to the Union under that agreement, would be used in part to support legislation or candidates, certain legislation and certain candidates, and to oppose other legislation and other candidates, what is your position with respect to such use of your money?"

"A. I would be absolutely against that, because I think I have sense enough to choose the candidate I would like to support myself, and then on the other hand, I think a man has a right to choose what legislation he believes in and wants to support and any candidate he believes in and wants to support."

Rebecca Scholl (R. 49): — "I would like to feel that I could support the candidates whom I wanted to; if I gave any money to the campaign, I would like to have it on the candidate whom I support and not from someone else selecting."

Elizabeth Brown (R. 64): — "If the evidence should establish or tend to establish a part of the money collected by the Union is used to oppose and seek to repeal the right-to-work laws, I am opposed to such use of my money, because I am for the right-to-work laws. If the evidence should establish or tend to establish that part of the money collected by Unions would be used to maintain the Federal law which makes possible Union shop agreements and that part of the money would be used to maintain that law in effect, I would be opposed to it."

R. P. Powell (R. 52): — "I would not be agreeable to having my money taken from me in any

amount and used by the Union to accomplish the wiping out of the right-to-work law."

Mary B. Crosby (R. 47-48): — "Q. If the evidence should show that the money which you might be compelled to pay to the Union would be used in part to influence the passage of laws, or to defeat the passage of legislation, or to influence the election of certain candidates and defeat the election of other candidates, what is your position with respect to such uses of your money?"

"A. I am opposed to it. I am opposed to use of my money to influence the passage of laws or effect the election of candidates, because I think that as individuals we should have the right to make our own decisions about such matters."

Yet in the face of all such testimony and protest the petitioners declare that each of the respondents is "to be regarded as a voluntary or acquiescing dues payer" — language which, incidentally, the petitioners quote from the *Street* opinions, but which was used there purely in reference to the class-action infirmity existing in that case — and not existing here.

CONCLUSION

It is submitted that the petitioners' contentions with respect to remedy in this case would reduce the respondents' adjudged rights to an illusion and a farce; that the judgment of the Court below is equitable, reasonable and appropriate and is free of the defects which this Court

found in the *Street* judgment; that there is consequently no occasion for the Court to review this case; and that the Petition for Writ of Certiorari should therefore be denied.

Respectfully submitted,

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IN THE

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v.

ANNA MAE ALLEN, ET AL., *Respondents*.

REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

This reply is made for the purpose of pointing out certain inaccuracies and misleading statements in the Opposition of the respondents which may result in misunderstanding the issues in this case.

1. In the first paragraph of their Opposition, in the statement of the Question Presented, the respondents say that it has been established and is no longer being

contested that petitioners will subject respondents to compulsion that was adjudged unlawful in *International Association of Machinists* v. *Street*, 367 U.S. 740.

It has not been so established, and if there is any such adjudication it is certainly contested. In the *Street* case this Court held that individual employees who are unwilling union members under a railroad union-shop agreement and who are opposed to particular political or ideological objectives supported by union funds derived from dues and who make such opposition known to the union would be entitled to limited relief against such expenditure of their funds, such as a return of a portion of their dues or an injunction against such expenditure of a portion of their dues. In this case none of the respondents is a member of or has paid any money to the petitioners under the union shop, there has been no adjudication that petitioners would so spend any of respondents' dues or other funds should they pay any, there has been no determination that respondents have advised petitioners of anything, and so the entire premise of the respondents' statement of the Question Presented is non-existent.

We submit that even if the Question Presented were as stated by respondents, the answer would be that the remedy granted below is inconsistent with this Court's decision in the *Street* case, for the reasons stated in our Petition.

2. The respondents state in the last paragraph starting on page 2, under "Statement of the Case", that the unions do not question that it has been established that dues and fees receipts are used to influence votes in public elections, and point to twenty-nine pages of

exhibits (R. 303-32) setting forth contributions made to campaigns of candidates for public office.

This presentation of respondents is grossly misleading. Those twenty-nine pages are lists of contributions to campaigns of candidates for public office. But the uncontradicted testimony,—with not one word to the contrary,—is that every cent of that money was paid from funds voluntarily contributed by various people, union members and others, and that not one cent of it came from union dues or fees. The contributions listed on those twenty-nine pages are contributions made to candidates for political office by the Committee on Political Education of the AFL-CIO and Railway Labor's Political League. The uncontradicted testimony, with not one word to the contrary, is that every cent of those contributions was paid from contributions voluntarily made for such purposes, and that not one cent of it came from dues or fees paid to either of the petitioners; there is simply not one word in the record to support the assertion of counsel for respondents that any of that money was paid directly or indirectly from union dues and fees, and certainly not from dues or fees paid to either of the petitioners. R. 138, 141-2, 144-5, 154, 159-61, 164-6, 167-73, 175, 189, 237-47.

3. In the full paragraph on page 3 of their Opposition the respondents mention certain special editions of the newspaper Labor supporting *in past years* certain candidate for public office. Since none of respondents have paid any dues to the unions, it is clear that none of their dues was used to support that newspaper, ignoring the fact that there is no showing that respondents opposed any of those candidates. There is no evidence that the lodges to which respondents would

pay dues if they became members subscribe to Labor. R. 188.

In the same paragraph they mention certain expenditures by the AFL-CIO for legislative and other purposes. They do not even contend that any such expenditures promoted causes opposed by respondents or opposed causes supported by respondents, that even if they did that respondents made that fact known, or that even if they made that fact known their dues were used for such purposes. Obviously their dues were not used for such purposes, for they have not paid any dues.

4. In the first paragraph on page 5, respondents say that the question of proper remedy is the only question which the unions are contesting. They misunderstand us. It is the unions' position that the respondents have not presented a cause of action under *International Association of Machinists* v. *Street*, 367 U.S. 740, for the reasons, among others, that they did not advise the unions of any particular expenditure made by the unions to which they were opposed, and not having been members since there has been a union-shop agreement no money paid by them was used for such purposes.

5. On page 7 the respondents quote from this Court's opinion in the *Street* case that: "Restraining the collection of all funds from the appellees sweeps too broadly." But then on page 8 they argue that the order in this case does not restrain the collection of all funds from respondents because although at the present time it restrains the collection of all funds from respondents, if the unions, in the future, go through certain procedures and make certain showings to the

trial court, the order may, or may not, be modified. This is a contradiction in terms. It is clear that the unions are restrained from collecting anything from respondents, and it is equally clear that such restraint is contrary to this Court's ruling in the *Street* case.

6. In the last paragraph beginning on page 12, supposedly substantiated by the excerpts from the Record on pages 13-16, respondents argue that it is unnecessary "to pursue the petitioners into the absurdities of their position" because the respondents in this case made known to the unions "repeatedly and unmistakably" that they objected to the unions supporting candidates and causes selected by the unions instead of candidates and causes selected by the respondents.

All the excerpts on pages 13-16 are from testimony given at the trial; clearly the views "repeatedly and unmistakably" made known to the unions were made known a little late. The full testimony of the respondents is summarized on pages 39-53, 58-66, 90-2 of the Record. As we pointed out in our petition, not one of the respondents, although asked, could name a single candidate or a single item of legislation or any other cause supported or opposed by the union contrary to his or her views, with the single exception that two or three of them would have objected to the unions supporting the enactment of section 2, Eleventh of the Railway Labor Act, the amendment permitting union-shop agreements in the railroad industry; the support of that legislation necessarily and obviously preceded any payment of money under compulsion of a union shop. Nor do respondents in their Opposition mention a single candidate or cause supported or opposed by the petitioners contrary to the views of any respondent.

7. In our Petition we argued that since respondents, apart from not paying any money to the unions, did not make known to the unions their opposition to any cause supported by the unions with funds they would have paid had they been members, they would have been "voluntary or acquiescing" dues payers under the *Street* case had they paid any dues. The respondents say we took that phrase from the *Street* opinions where it was used "purely in reference to the class-action infirmity in that case. . . ." Again, that is not so. The phrase was taken from the dissenting opinion of Mr. Justice Black. 367 U.S. at 795. Even that dissenting opinion expresed the view, in accord with the opinion of the Court, that employees who do not protest to the unions the expenditure of their funds to support causes or doctrines opposed by them must be regarded as "voluntary or acquiesing" dues payers. The respondents were not and are not dues payers at all.

CONCLUSION

The issues in this case are not contained in the Question Presented in the Opposition of the respondents. The questions are those contained in the Questions Presented of the Petition. As a result of the decisions below those questions are answered in the affirmative. In substance it was held below that a union may be enjoined from enforcing a union-shop agreement against respondents on a mere showing that the union spends a portion of its funds in support of or in opposition to legislation or candidates, regardless of whether respondents' views are in accord with or in opposition to the causes supported by the union, regardless of whether the respondents made known their views to

the union, and regardless of whether respondents have ever paid any money to the union.

Such holding is contrary to the holding in the *Street* case and is not supported by any of the opinions in the *Street* case. In any event, whether such holding is sound is surely a question of such importance that it should be passed upon by this Court.

Respectfully submitted,

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October 11, 1962

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BRIEF FOR PETITIONERS

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CASES CITED

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The judgment of the trial court was rendered without opinion and is unreported; it appears at pages 22-23 of the printed record. The first opinion of the Supreme Court of North Carolina, reversing the trial court, is reported at 249 N.C. 491, 107 S.E. 2d 125, and appears at R. 180. The second opinion of the Supreme Court of North Carolina, on rehearing, affirming by an equally divided court the judgment of the trial court, is reported at 256 N.C. 700, 124 S.E. 2d 871, and appears at R. 216.

JURISDICTION

The original decision below, reversing the trial court, was entered February 25, 1959. R. 222. A petition for rehearing was granted May 20, 1959. R. 222. On April 11, 1962, the court below, on rehearing, divided equally and ordered that such division affirmed the judgment of the trial court. R. 216, 219. A petition for rehearing by these petitioners was denied May 15, 1962 (R. 220), and final judgment of the court below was entered that day. R. 222. The petition for certiorari was filed August 10, 1962, and the petition was granted October 22, 1962. R. 223. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTE INVOLVED

Section 2, Eleventh of the Railway Labor Act (Act of January 10, 1951, c. 1220, 64 Stat. 1238, U.S.C. Tit. 45 § 152, Eleventh) reads in pertinent part as follows:

> "Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any state, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—
>
> "(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such conditions of employment with respect to employees to whom membership is not

available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

* * * * *

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

QUESTIONS PRESENTED

1. Whether the application of a union-shop agreement, conforming in all respects to the provisions of section 2, Eleventh of the Railway Labor Act (64 Stat. 1238, 45 U.S.C., § 152, Eleventh), may be enjoined because the union involved uses a portion of its dues and fees to (a) support or oppose legislation, (b) in-

fluence votes in public elections, (c) make contributions to campaigns of candidates for public office, and (d) (in the case of one of petitioners) pay death benefits to the beneficiaries of members who die, on the basis of a jury finding that such activities are not necessary or related to collective bargaining.

2. Whether the application of a union-shop agreement under section 2, Eleventh of the Railway Labor Act may be enjoined with respect to employees who did not know of any legislative or political activity of the union to which they were opposed and who did not inform the union that represented their craft of any activity or expenditure to which they were opposed.

3. Whether the application of a union-shop agreement under section 2, Eleventh of the Railway Labor Act may be enjoined with respect to employees who since the date of the agreement have not been members of the union or paid any dues, fees, or assessments to the union.

STATEMENT OF THE CASE

A. Preliminary Statement of Facts

The petitioners and a number of other railway labor organizations, who were defendants below, are the same railway labor organizations that were defendants in the trial court and appellants in this Court in *International Association of Machinists* v. *Street*, 367 U.S. 740, 81 S. Ct. 1784, 6 L. Ed. 2d 1141. They are standard railway labor organizations which have at all material times been the collective bargaining representatives of their respective crafts or classes of employees of the Southern Railway. R. 12. The appellees are employed by the Southern in two of the crafts so repre-

sented. The Southern Railway Company was a defendant in the courts below and is the same railroad as was a defendant and appellee in *International Association of Machinists* v. *Street*. It is a common carrier by railroad subject to the Interstate Commerce Act and as such a "carrier" within the meaning of and subject to the Railway Labor Act.

The individual appellees are residents of North Carolina and are employed by the Southern in that State in the crafts or classes represented by the petitioners. R. 2. They purported to sue the Southern, the petitioners, and the other labor-organization parties to the union-shop agreement on behalf of all employees of the Southern represented in collective bargaining by any of such unions. R. 2-4.

By the addition of subsection Eleventh (set forth above) to section 2 of the Railway Labor Act on January 10, 1951, Congress amended that Act so as no longer to prohibit all forms of union-security agreements but subject to the limitations and conditions prescribed by the statute. It provided that such agreements should be permitted "Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or territory thereof, or of any State". Thereafter, on February 27, 1953, effective April 15, 1953, the Southern and the union defendants below entered into a union-shop agreement substantially in the terms of the 1951 amendment to the Railway Labor Act. R. 12, 160-70. The agreement requires (subject to certain conditions and limitations not here relevant) that all employees covered by the basic collective bargaining agreement between the carrier and the union, as a condition of their continued employment, become members of the union representing their

craft or class within 60 days after the beginning of such employment, or after the effective date of such agreement, whichever is later. R. 160. However, no such condition of employment applies to any employee to whom membership is not available on the same terms and conditions as are generally applicable, nor to any employee to whom membership is denied or whose membership is terminated for any reason other than failure to tender the periodic dues, fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. R. 163. The union-shop agreement is the same agreement as was involved in the *Street* case, and except for the names of the parties is identical with the union-shop agreement before this Court in *Railway Employes' Department* v. *Hanson*, 351 U.S. 225.

The individual appellees chose not to comply with this condition upon their continued employment by the Southern. Instead they brought, or became additional parties to, this action seeking to enjoin the Southern and the unions from carrying out or enforcing the agreement (R. 4, 5), alleging that they were not members of the respective unions and did not pay dues, fees, or assessments to the unions and did not desire to do so (R. 2-3), and alleging that enforcement of the agreement would be unlawful. R. 3. The union defendants answered, among other things admitting that plaintiffs were not members and did not make any payments to the union, and alleging that the union-shop agreement was entered into in accordance with the authorization of section 2, Eleventh of the Railway Labor Act and was therefore a valid and enforceable agreement. R. 12, 13.

The union defendants also filed a demurrer to the complaint on the ground (among others) that the agreement was specifically authorized by federal law, including section 2, Eleventh of the Railway Labor Act. R. 16. The plaintiffs amended their complaint to allege that the unions spent a portion of their receipts to finance political activities contrary to the choice of the plaintiffs. R. 14-15. The demurrer was overruled and an earlier-issued temporary injunction continued. R. 17-18.

Trial of the case was before a jury.

None of the plaintiffs testified that, nor is there anything else in the record even remotely indicating that, any of them ever advised the union he or she was opposed to union political activities or to what particular activities such opposition was held. Most of those who testified stated that they were opposed to unions engaging in any political or legislative activities.

B. Facts Adduced at the Trial

Fourteen of the plaintiffs testified in person; of those who did not testify two were no longer employees, one was in an excepted position and not subject to the union-shop agreement (R. 110), and with respect to the remainder their counsel stated that their "testimony would be cumulative and repetitive to the testimony already given." R. 109.

Every one of them testified that he or she was not a member of the union representing his or her craft or class, and was opposed to a union shop. Their further testimony is summarized below.

Witness Thompson stated that she was opposed to a union shop. R. 26. She was opposed also to the

use of any part of such dues as she might pay being used for insurance because she thought she should have freedom to choose her own company. R. 26. She was not agreeable to dues being used to promote the enactment or defeat of proposed legislation (R. 26) because she thought "every American has a right to choose for himself what he wants to do with his money". R. 27. The only specific laws she could name which the union that was her collective bargaining representative "might" support or oppose contrary to her wishes were right-to-work laws and Section 2, Eleventh of the Railway Labor Act, but she did not know whether her collective bargaining representative opposed the North Carolina right-to-work laws. R. 27. "Those are the only specified (specific?) things that I can think of now. Of course, not being too familiar, I actually don't know what they are for and against." R. 27.

Witness Craven Smith testified that he was opposed to unions engaging in political or legislative activity, but could not mention any specific expenditure by the union to which he was opposed. R. 27-8. He stated that he was not opposed to liberalization of benefits under the Railroad Unemployment Insurance Act, and knew of no way to obtain such liberalization other than through legislation. R. 28.

Witness Atwell had been a member of the union but terminated his membership in 1921 because of a wildcat strike to which he was opposed. R. 29. He did not know how improvements in wages, holiday pay, vacations, etc., came about but supposed it was because of collective bargaining. R. 30-1. He was opposed to unions opposing right-to-work laws "which I think they are opposed to". R. 32. He was not opposed to

unions spending money for causes he agreed with and dues being used for such purposes. R. 32. He could name only one candidate for public office he was opposed to but did not know whether the union supported that candidate. R. 32.

Witness Crosby was opposed to the union shop and to unions trying to influence elections or legislation. R. 33.

Witness Carriker was opposed to the union shop and to being required to pay anything to a union. R. 33.

Witness Scholl testified that she was opposed to a union shop and opposed to being required to pay anything to a union. She stated that she wanted to engage in political or legislative activities directly and not through a union. R. 34.

Witness Powell testified that he was opposed to a union shop and was opposed to unions engaging in political or legislative activities. The only specific activity he could name was support of the enactment of Section 2, Eleventh. He did not know what activities his collective bargaining representative engaged in, but was opposed to them. R. 35, 37, 38.

Witness Sheets testified that she was opposed to the use of dues she might pay being used to support or oppose legislation or candidates because "the unions might not be supporting the ones that I am interested in". R. 42. She was opposed to strikes; during two strikes (by unions other than her collective bargaining representative) her job was abolished but she worked anyway without pay. R. 42-3. She was not required to work but worked without pay to show her opposition to strikes. R. 43.

Witness Bass testified that he was opposed to part of his dues being used for political or legislative purposes. R. 44. He thought he was worse off because of collective bargaining than he would have been without it. R. 44-5. He was in favor of being compelled to do things he does not want to do only if they are right. R. 45.

Witness Ball testified that she objected to being forced to pay money to any organization without being "absolutely sure" what it would be spent for. R. 46. When unions (not including her collective bargaining representative) were on strike in 1950 her job was abolished but she reported for work anyway and performed her duties without pay to show her "good will". R. 46.

Witness Brown testified that she was opposed to being forced to join anything. R. 47. She was opposed also to having an organization represent her that "would possibly" support something "I might not be in favor of". R. 47. She was opposed to her dues being used for insurance. R. 48. She was in favor of right-to-work laws and opposed to Section 2, Eleventh. R. 48.

Witness Celestia Smith was opposed to paying dues to an organization that supports a candidate "whom I might not wish to support". R. 49.

Witness Crosby testified that she thought she had been hurt by collective bargaining. R. 49, 50.

Witness Hackney stated he was opposed to dues he would pay being used for political or legislative purposes or for insurance or death benefits. R. 72. He once belonged to the Clerks but terminated his membership in protest against the 40-hour week; thereto-

fore he had been one of the few employees who regularly worked seven days per week. R. 73-4.

As stated above, all the witnesses testified that they were not members of the union that was their collective bargaining representative, and were opposed to a union shop.

In addition to the oral testimony, evidence was introduced tending to show that the AFL-CIO, with which petitioners are affiliated, engages in legislative and certain other activities. R. 91, 95-8. There was no evidence showing whether those activities were or were not in accord with the plaintiffs' views. There was also evidence that Railway Labor's Political League and the Committee on Political Education of the AFL-CIO made contributions to the campaign funds of candidates for public office. The uncontradicted evidence is that such contributions were made entirely from contributions voluntarily made to those organizations for such purposes, and that none of it came from dues or fees paid to either of the petitioners. R. 86, 87-9, 91, 98, 106, 124-33. There was no evidence that any of the plaintiffs were opposed to any of the candidates to whose campaigns such contributions were made.

The plaintiffs, all of whom are employed in either the clerical or the signalman craft, had brought this action against all the non-operating unions on the Southern to enjoin all of them from putting into effect their union-shop agreements. R. 1. At the close of the plaintiffs' direct case a demurrer to the evidence was sustained as to all the defendant unions except these petitioners, and overruled as to these petitioners. R. 21, 110.

C. Further Proceedings

The jury returned a special verdict finding that the petitioners use dues in part to support or oppose legislation and to influence votes in public elections, and that these activities as well as the death-benefit system of the Brotherhood of Railway Clerks are not necessary or reasonably related to collective bargaining. R. 22. On the basis of such jury verdict the trial court enjoined petitioners (and the Southern Railway) from placing any compulsion of any nature on any of the respondents to join either of the petitioning unions or conform to any of their rules or disciplines, with the proviso that petitioners "shall be permitted, upon proper notice, to present proof to the Court, not conflicting or inconsistent with the findings of the jury . . . as to what portion of the periodic dues, initiation fees and assessments . . . will be reasonably necessary and related to collective bargaining between the defendant unions and the plaintiffs' employer . . . and upon making of such proof . . . to the satisfaction of the Court, this Order shall have no application or force or effect with respect to such portion of such periodic dues, initiation fees or assessments . . . ." R. 23.

On appeal to the Supreme Court of North Carolina that Court first, by a six to one majority, reversed the trial court principally on the authority of *Railway Employes' Department* v. *Hanson*, 351 U.S. 225. R. 180. After the decision of the trial court in *International Ass'n of Machinists* v. *Street* (367 U.S. 740), a rehearing was granted on May 20, 1959. R. 222. The Court below did nothing further until after the decision of this Court in the *Street* case, after which it ordered reargument which was had on September 26, 1961. R. 222. After reargument the Court divided

equally and affirmed the trial court. R. 216-18. Petitioners' petition to rehear was denied and final judgment entered May 15, 1962. R. 220, 222.

SUMMARY OF ARGUMENT

In *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961), this Court held that under a union-shop agreement entered into pursuant to section 2, Eleventh of the Railway Labor Act, individual union members who are opposed to specific legislative and political objectives supported by the union and who make such opposition known to the union would be entitled to limited relief against the expenditure of their funds on behalf of such legislation or candidates they oppose. The Court held that relief could be given (1) only with respect to expenditures for particular candidates or causes opposed by the individual seeking relief, and (2) only to such individuals who make such opposition known to the union, and (3) only with respect to the expenditure or refund of specific amounts, and that an injunction against enforcement of the union-shop agreement is not an appropriate remedy to be given to the complaining individuals.

The result of the action in the courts below is contrary to all three of those limitations. The plaintiffs did not prove a cause of action because none of them could name a single candidate or cause supported by the union and which he or she opposed. They also failed to prove a cause of action because none of them made known to the union his or her opposition to any candidate or cause supported by the union. And the remedy given below is also contrary to this Court's decision in the *Street* case in that it enjoins enforce-

ment of the union-shop agreement, exactly the remedy this Court held was not appropriate even if a cause of action is proven.

ARGUMENT

A. The Respondents Did Not Prove a Cause of Action Both Because There Is No Evidence That Petitioners Have Expended Funds in Support of Any Cause Opposed by Any of Respondents and Also Because There Is No Evidence That Any of Them Made Known to the Union Their Opposition to Any Cause Supported by Petitioners

In *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961), this Court held that under a union-shop agreement entered into pursuant to section 2, Eleventh of the Railway Labor Act, individual union members who are opposed to specific legislative and political objectives supported by the union and who make such opposition known to the union would be entitled to limited relief against the expenditure of their funds on behalf of such legislation or candidates they oppose.

There are five opinions in the *Street* case. One of the Justices (Mr. Justice Whitaker) would have affirmed the decree below. 367 U.S. at 780. Mr. Justice Black was of the opinion that a class action had been improperly permitted by the Georgia courts, and that relief could be granted only to members who were opposed to specific causes supported by the union and who advised the union of their opposition to such causes, but with some other qualifications otherwise would have affirmed. 367 U.S. at 797. Mr. Justice Frankfurter and Mr. Justice Harlan thought the case should be reversed and remanded for dismissal. 367 U.S. at 819. The remaining members of the Court thought that individual union members who are op-

posed to specific political objectives of the union and who make such opposition known to the union would be entitled to limited relief; they voted to reverse the injunction against the enforcement of the union shop agreement and indicated the kind of relief that might be appropriate.

It is plain that the Court held that there are thus two essential ingredients to a claim for relief that are absent in this case: first, that the complaint must be predicated on expenditures for particular candidates or causes opposed by the complainant; and second, that the opposition of the complainant to such particular causes must have been made known to the union. This is abundantly plain from an examination of the opinions in the *Street* case, which are replete with expressions of such limitations.

The opinion of the Court describes the *Street* case as one in which it was alleged that each of the plaintiffs was compelled to make payments to the union which were used in substantial part "to finance the campaigns of *candidates for federal and state offices whom he opposed*, and to promote the propagation of *political and economic doctrines, concepts and ideologies with which he disagreed.*"* 367 U.S. at p. 744. At page 747 the Court contrasted that situation with the holding by the Nebraska Supreme Court in *Railway Employes' Dept.* v. *Hanson*, reversed by this Court (351 U.S. 225), that the union-shop agreement was invalid because money derived from dues was used to promote candidates and concepts which "'*may or may not be of an employee's choice.*' 160 Neb. 669, 697";

* Emphasis supplied in this and subsequent quotations from the opinions.

367 U.S. at 747. (Emphasis supplied) On the same page the Court further characterized the Nebraska court's decision as considered in the context of the union being "an organization with political facets" and as having erroneously held that membership in such an organization could not be compelled. On pages 747-8 the *Hanson* case is further distinguished on the ground that in it there was "nothing to show that the employees there involved opposed the use of their money for any *particular* political objective" or that "the unions were actually engaged in furthering *political causes with which they disagree* and that their money would be used to support such activities." Thus it held that the *Hanson* case had not passed on "the issue of the use of exacted money for *political causes which were opposed by the employees.*" At p. 749.

The Court looked upon the *Street* case as posing the issue whether under the union-shop agreement authorized by the Railway Labor Act "the labor organization receiving an employee's money should be free, *despite that employee's objection*, to spend his money for *political causes which he opposes.*" At p. 749. It stated that "each named appellee in this action *has made known to the union* representing his craft or class his dissent from the use of his money for *political causes which he opposes.*" At p. 750. To avoid constitutional issues susceptible of avoidance, it examined the legislative history of Section 2, Eleventh to see if it could reach a construction of it "which denies the authority to a union, *over the employee's objection*, to spend his money for *political causes which he opposes.*" At p. 750. It found such construction possible, finding no Congressional suggestion that section 2, Eleventh was intended "to provide the unions with a means

for forcing employees, *over their objection*, to support *political causes which they oppose*." At p. 764. It looked into the question whether the Act limited the union's power to spend money received from compelled payments "to the extent of denying the unions the right, *over the employee's objection*, to use his money to support *political causes which he opposes*." At p. 768. It thought that the fact that the Act did not contain a comprehensive regulatory scheme governing expenditures did not necessarily mean that it "places no restriction on the use of an employee's money, *over his objection*, to support *political causes he opposes*." At p. 767. It construed section 2, Eleventh "to deny the unions, *over an employee's objection*, the power to use his exacted funds to support *political causes which he opposes*." At pp. 768-9. After again referring, on page 770, to "political causes objected to by the employee" it pointed out that "our construction therefore involves no curtailment of the traditional political activities of the railroad unions. It means only that those unions must not support those activities *against the expressed wishes of a dissenting employee with his exacted money*." And (at p. 774) "Any remedies, however, would properly be granted only to employees *who have made known to the union officials* that they do not desire their funds to be used for *political causes to which they object* . . . but *dissent is not to be presumed—it must affirmatively be made known to the union* by the dissenting employee."

Mr. Justice Douglas, concurring, thought a dissenting employee "should not be required to finance *the promotion of causes with which he disagrees*." 367 U.S. at 776.

Mr. Justice Black, dissenting in part, considered the case on the basis of the constitutionality of section 2, Eleventh "interpreted so as to authorize compulsion of workers to pay dues to a union for use in advocating causes and political candidates *that the protesting workers are against.*" At p. 786. He distinguished the *Hanson* case on the ground that in that case there was no proof or findings that union funds were regularly used "to support political parties, candidates and economic and political *causes to which the complaining employees were hostile.*" At p. 786. He thought the *Hanson* case did not hold that railroad union-shop agreements could be used "as an excuse" to force workers "to pay their money to support *causes they detest.*" At p. 787. He thought an Act of Congress "compelling a man by law to pay his money to elect candidates or advocate laws or doctrines *he is against* differs only in degree, if at all, from compelling him by law to speak for a candidate, a party, or a *cause he is against.*" At p. 788. He thought that the Act, in operation in view of the evidence, takes money from some men and turns it over to others "to thwart the political, economic and ideological hopes of those whose money has been forced from them." At p. 789. Thus, he believed, the Act was being used to exact money from people "to help get votes to win elections for parties and candidates and to support doctrines *they are against.*" At p. 790. He was of the view that the First Amendment deprived Congress of power to compel a man to expend his money "to advance the fortunes of *candidates he would like to see defeated* or to urge ideologies and *causes he believes would be hurtful to the country.*" At p. 790. He repeated that Congress was without power to compel a person to pay money to be used "to advocate doctrines or views *he*

is against." At p. 791. He agreed with the majority that a class action was improper because the only employees who could be included in the class "would be *those who personally oppose* the views they allege the union is using their dues to promote," a subjective test, so that no one could ever be certain at any time what persons were in the class. At p. 793. He would have limited the decree to expenditure of money "over *the expressed objection* of the six particular employees. Other employees who have not protested are of course in the entirely different position of voluntary or acquiescing dues payers." At pp. 794-5.

We are perhaps guilty of redundance in quoting the foregoing excerpts, but one thing is crystal clear from that redundancy: *all but one* of the Justices who thought that *any* relief should be granted would limit it very specifically to employees *who had made known to the union* that they were *opposed to particular candidates or causes* which the union was spending dues money to promote. (They differed only in the extent of relief they would grant to such persons). Their distinction of the *Hanson* case as involving expenditures to support causes "which may or may not be of an employee's choice" (at p. 747) and in which there was "nothing to show that the employees there involved opposed the use of their money for any *particular* political objective" (at pp. 747-8) makes such proposition beyond reasonable dispute.

Not one of the petitioners meets either of those tests; there is nothing in the record even remotely indicating that any of them ever advised the union he or she was opposed to union political activities or to what particular activities such opposition was held. As we have shown in detail in section B of the Statement

of the Case, supra, not one of them, although asked, could name any political or legislative candidate or cause supported or opposed by the union contrary to his or her views. It is plain from their testimony that their opposition is directed not to any particular activity or expenditure of their collective bargaining representatives but rather to the union shop, and it is just as plain that this Court has unequivocally held that the union shop is lawful. 367 U.S. at 771, where this Court stated: "However, the union-shop agreement itself is not unlawful." See *Hostetler* v. *Bro. of R. Trainmen*, 287 F. 2d 457, cert. den., 368 U.S. 955 (4th Cir. 1961). The only political or legislative activity of either of petitioners which any respondent said he opposed was the enactment of section 2, Eleventh of the Railway Labor Act. The enactment of section 2, Eleventh necessarily occurred before there was a union shop.

Since none of the respondents has shown any political or ideological cause promoted or opposed by his or her collective bargaining representative since the effective date of the union-shop agreement contrary to his or her views, and since even if there had been such showing not one of them ever made known to the union his or her opposition to such cause, there is a compound failure to present a cause of action under the *Street* case.

Furthermore, it is impossible for any of respondents to prove a cause of action at the present time. None of them has been a member of the union since the effective date of the union-shop agreement. This Court held in the *Street* case (at p. 771):

> ". . . appellees' grievance stems from the spending of their funds for purposes not authorized by

> the Act in the face of their objection, not from the enforcement of the union-shop agreement by the mere collection of funds."

Since none of the respondents has paid any money to the union under compulsion of a union shop, petitioners have not spent any "of *their funds* for purposes not authorized by the Act", and so there cannot stem from any such non-existent expenditure a recognizable grievance.

B. Even Had Respondents Proven a Cause of Action, the Remedy Granted Below Is the Very Remedy This Court Held Could Not Be Granted

It is clear beyond reasonable dispute that the injunction against enforcement of the union-shop agreement is contrary to the holding of this Court in the *Street* case. The opinion of the Court in that case makes this abundantly plain. It held (at p. 771):

> "However, the union-shop agreement itself is not unlawful, *Railway Employees' Dept.* v. *Hanson*. The appellees therefore remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement. . . . *We think that an injunction restraining enforcement of the union-shop agreement is therefore plainly not a remedy appropriate to the violation of the Act's restriction on expenditures.*" (Emphasis supplied.)

The decree below grants an injunction against enforcement of the union-shop agreement, the very remedy this Court held not appropriate.* R. 23.

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* For a decision almost anticipating such holding of this Court, see *Hostetler* v. *Bro. of R. Trainmen*, 287 F. 2d 457, cert. den. 368 U.S. 955 (4th Cir. 1961).

Whatever rights respondents might have had if they had proven a cause of action, such rights would not include a right to have the enforcement of the union-shop agreement enjoined. The most the respondents can find in the *Street* case is that they cannot be compelled to make political utterances, through the expenditure of "their funds" (367 U.S. at 771), contrary to their actual beliefs, even though the making of such utterances is as indirect as the union making expenditures from dues receipts to promote such causes, if they make known to the union their personal opposition to the particular political cause the union is supporting. See, e.g., pp. 774, 793.

In their Opposition to the Petition for Certiorari, the respondents recognized that this Court had held in the *Street* case (at p. 771) that: "Restraining the collection of all funds from the appellees sweeps too broadly." And they recognized that this Court held (at p. 772) that: ". . . an injunction against enforcement of the union shop itself through the collection of funds is unwarranted." Yet they argued, as they did below, that the order in this case does not restrain the collection of all funds from respondents because, although it restrains the collection of all funds from respondents, if the unions, in the future, go through certain procedures and make certain showings to the trial court, the order may, or may not, be modified.

This is a contradiction in terms. It is clear that the unions are restrained from collecting anything from the respondents under the union-shop agreement, and it is equally clear that such restraint is contrary to this Court's holding in the *Street* case.

CONCLUSION

Since, under the *Street* case, there is a compound failure to prove a cause of action, the judgment below should be reversed and the case remanded for dismissal. In any event, the judgment should be reversed because it grants relief which this Court held could not properly be granted; and since there is nothing in the record to indicate any basis for any other relief, the remand should be for dismissal on this ground too.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, ET AL., *Petitioners*

v.

ANNA MAE ALLEN, ET AL.

On Writ Of Certiorari To The Supreme Court Of The State Of North Carolina

Brief For The American Federation Of Labor And Congress Of Industrial Organizations As Amicus Curiae

Interest Of The AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The AFL-CIO is primarily a federation of national and international unions, including the petitioner unions. The total membership of unions affiliated with the AFL-CIO is approximately 13 million. This brief is submitted because of the importance to all unions of the issue in this case.

The courts below enjoined the enforcement of union shop agreements, subject to the proviso that the petitioner unions may show what portion of dues is used to meet collec-

tive bargaining costs, and may enforce the agreements as to that portion. (R. 22-23. 219-220.) The decision below seems realistically to confront the unions with the option of giving up the union shop or of narrowly restricting their activities to collective bargaining, and abandoning other effectual means and traditional activities, such as in the legislative and political fields, undertaken for the benefit of their membership.

While the union shop agreements involved in this case were entered into under § 2, Eleventh of the Railway Labor Act, as amended, that statutory provision is virtually identical with and was copied from § 8(*a*)(3) of the National Labor Relations Act, as amended. Thus the decision in this case may affect the validity of or union disbursements under all union shop agreements.

SUMMARY OF ARGUMENT

I

The judgment of the trial court, which was affirmed by an equally divided State Supreme Court, is irreconcilable with *International Association of Machinists* v. *Street*, 367 U.S. 740. In that case the Court construed § 2, Eleventh of the Railway Labor Act as forbidding unions to spend dues money collected under a union shop agreement (1) over an employe's objection (2) for political causes (3) which he opposed. All three of these elements must be present to render a disbursement illegal.

The proof in the present case does not meet these criteria. All that the evidence establishes, and all that the jury found, is that the unions use dues for political and legislative purposes, generally. There is no testimony that any union spent money for any particular political cause opposed by any individual plaintiff. This case thus parellels *Lathrop* v. *Donohue*, 367 U.S. 820, where the Court affirmed dismissal

of the complaint because the plaintiff had failed to establish that dues money had been expended for "particular political causes" over his opposition.

II

We respectfully urge that the Court reconsider its decision in *Street*, and that it adopt the views expressed in the dissenting opinion of Justice Frankfurter in that case.

The interpretation given § 2, Eleventh of the Railway Labor Act rests on the legislative history of that provision, plus the avoidance of constitutional issues. In its opinion the Court flagrantly misconstrued the legislative history, and no constitutional issues of substance are presented even if the statute is read as it is written.

The Court's conclusion that Congress enacted the 1951 amendment to the Railway Labor Act (§ 2, Eleventh) solely because collective bargaining and grievance adjustment in the railroad industry are more expensive than in other industries is flatly contradicted by the legislative history. That history shows that the 1951 amendment simply added to the Railway Labor Act the union shop provisions of the Taft-Hartley Act (1947), and that the Congress enacted the amendment simply because it thought it only fair that unions in the railroad and the airline industries have the same rights to negotiate union security agreements as unions in other industries.

Insofar as the interpretation given § 2, Eleventh in *Street* rests on the avoidance of constitutional doubts, it is similarly lacking in support.

None of the opinions in *Street* or in *Railway Employes' Department* v. *Hanson*, 351 U.S. 225, point to any constitutional issue so substantial as to warrant the tortured construction given § 2, Eleventh. None of the opinions even make it clear how governmental action is involved, either in the execution of union shop agreements or in the spending of dues money collected thereunder.

Hanson seems to find governmental action in the fact that § 2, Eleventh overrides inconsistent state law. However, a federal statute providing that an activity shall not be regulated by the States does not without more invest the activity with governmental character.

The dissenting opinion of Justice Black in *Street* and the opinion of Justice Brennan in *Lathrop* v. *Donohue* seem to equate a statute authorizing unions and employers to institute a union shop by mutual agreement with the imposition of a closed shop by government fiat. However, there is a vast difference between the two. Unions and employers have been free throughout most of history to negotiate union shop agreements, and the 1951 amendment simply restored to them the freedom in this respect which they had enjoyed up to 1934.

The opinion of the Court in *Street* seems to say that constitutional problems would arise if § 2, Eleventh were construed as vesting unions with unlimited power to spend dues money collected under union shop agreements, and that § 2, Eleventh should therefore be construed as restricting the power of unions to spend such dues money. However the power of a union to spend money is not derived from statute, and there was accordingly no need to interpret § 2, Eleventh as authorizing the disbursement of funds. Hence there was no constitutional problem to be avoided, and the interpretation of § 2, Eleventh as restricting unions in their use of funds has no basis either in the avoidance of constitutional doubt or in the language or history of the provision.

If the use of union funds is to be subjected to additional regulation, it is for the Congress to enact the appropriate legislation. Congress has placed some restrictions on the use of union funds, and has considered but rejected other restrictions rather like those imposed by the Court in *Street*. In writing its own restrictions on the use of union funds under the thin guise of interpreting a statute, the Court

has, we respectfully submit, usurped a function of Congress, and one that the Congress is better qualified than the Court to discharge.

A final possible basis for concluding that a collective bargaining agreement involves some degree of governmental action is the status as exclusive bargaining representative which the National Labor Relations Act and the Railway Labor Act confer on unions chosen by a majority of the employes. However, if the binding of dissenters by a collective agreement constituted governmental action, not only union security provisions but numerous other provisions would have to meet constitutional tests. That concept would give rise to insuperable difficulties, and it was rejected by the Court long ago.

In the language of the well-worn cliche, the Court's decision in *Street* opens Pandora's box. We respectfully urge that it close it.

ARGUMENT

I

The Trial Court's Judgment is Irreconcilable with Street and Hanson.

The judgment of the trial court enjoins the defendants from placing any compulsion upon the plaintiffs to join the defendant unions, or pay money to them, subject to the conditions that the unions may present proof to the Court "as to what portion of the periodic dues, initiation fees and assessments, which they desire to collect from the plaintiffs, will be reasonably necessary and related to collective bargaining between the defendant Unions and the plaintiffs' employer . . . and upon the making of such proof . . . to the satisfaction of the Court," the injunction will cease to apply to that portion of the dues, fees and assessments. (R. 23.) This order was affirmed on appeal by an equally divided court. (R. 217-218.)

The immediate question is whether the trial court's order comports with the decisions of this Court in *International Association of Machinists* v. *Street*, 367 U.S. 740, and *Railway Employes' Department* v. *Hanson*, 351 U.S. 225.[1] We submit that it does not.

In the *Hanson* case this Court upheld the constitutionality of § 2, Eleventh, of the Railway Labor Act, which permits unions and employers to enter into a specified type of union shop agreement. The Court, however, reserved decision as to a case where "the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment." (351 U.S. at 238.)

In *Street* the Court amplified what it meant by using the required payment of dues, etc., "as a cover for forcing ideological conformity." It declared that § 2, Eleventh would be of doubtful constitutionality if it were construed as "vesting the unions" with the "power" "over the employee's objection, to use his money to support political causes which he opposes." 367 U.S. at 768. Therefore, the Court held (367 U.S. at 768-769):

> "* * * § 2, Eleventh is to be construed to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes."

This rationale, we submit, invalidates only expenditures (1) over an employe's objection (2) for political causes (3) which he opposes. All these elements must be present to render a disbursement illegal as "forcing ideological con-

[1] At the outset of this litigation in 1953, which was prior to this Court's decision in *Hanson*, the trial court issued a restraining order unconditionally enjoining enforcement of the union shop agreements. (R. 5-7.) In 1957, after this Court's decision in *Hanson* but prior to its decision in *Street*, the trial court issued a premanent injunction conditioned as stated above. (R. 17-19.) This order was affirmed, following *Street*, by an equally divided State Supreme Court. (R. 218.)

formity." It is the expenditure, not the collection of dues, for a particular political or legislative purpose over the employe's objection that is illegal. "In other words, appellees' grievance stems from the spending of their funds for purposes not authorized by the Act in the face of their objection, not from the enforcement of the union-shop agreement by the mere collection of funds." 367 U.S. at 771.

The testimony in this case does not begin to meet the tests laid down in *Hanson* and *Street* as invalidating a disbursement. The special findings of the jury simply are that the petitioner unions use dues for political and legislative purposes, and, in the case of one union, death benefits, which are not reasonably related to collective bargaining. (R. 22.)

The real basis of this suit is not that the plaintiffs' dues money will be used for particular legislative causes or political candidacies which they oppose, thereby imposing "ideological conformity" on them, but simply that the plaintiffs are opposed to unions in toto, and object to being required to join. That is all that the original complaint alleged, and the only relief the complaint specifically seeks is to enjoin enforcement of the union shop agreements. (R. 2-4.)

After this Court decided *Hanson*, the complaint was amended to allege, *inter alia*, that the dues, etc., the plaintiffs will be required to pay "have been and are (sic) and will be" used for "the election of candidates for public and governmental office whom the plaintiffs oppose and the defeat of other political candidates whom the plaintiffs support and the enactment of legislation which the plaintiffs oppose and the defeat of other legislation which the plaintiffs' support." (R. 15.)[2] However, plaintiffs made no effort to prove these allegations.

Each plaintiff did testify that he (or she) was not a member of a union (R. 25, 27, 29, 33, 34, 35, 39, 43, 45, 47, 48, 71),

[2] The prayer for relief was not amended.

and did not wish to join one (R. 25, 27, 29, 32, 34, 35, 39, 43, 45, 47, 48, 71), and that he opposed the union shop (R. 26, 27, 29, 33, 34, 35, 42, 44, 46, 47, 48, 72). Most of the plaintiffs testified that they were opposed, in general, to the use of union dues to support or oppose legislation or candidates for office (R. 26, 28, 33, 34, 35, 42, 44, 46, 47, 48, 72), and some of them testified that they opposed the use of dues for payment of death benefits (R. 26, 48, 72). Three of the plaintiffs expressed hostility to collective bargaining (R. 45, 49-50, 72-74. No plaintiff testified that the union position on any particular legislative issue was at variance with his own, except that some of them stated that they opposed the union shop which they assumed that the unions supported (R. 27, 29, 32, 37). No plaintiff testified that the union supported any specific candidate he opposed, or vice versa. The plaintiffs who were questioned on the point acknowledged that they did not know what causes or candidates the unions supported, apart from their presumed support of the union shop (R. 27, 32, 37, 38).

Essentially the plaintiffs asked that enforcement of the union security agreements be enjoined simply on the ground that the unions acknowledge that they spend money for legislative and political purposes (R. 62-67, 83-101), and in the case of one union, for death benefits (R. 79).

The fact that the unions engage in, and spend money on, political and legislative causes, whereas the plaintiffs—who oppose unions in toto—do not think that they should, hardly amounts to the unions "forcing ideological conformity." The plaintiffs do not even know, in general or in particular, what the unions' ideology is. (It is true that the testimony of each of the plaintiffs was quite similar, but we doubt that their ideological conformity derived from the prospect of paying dues.)

The decision below is directly at odds with the ruling of this Court in *Street* as to "The Appropriate Remedy" (367 U.S. at 771-775). Justice Black, dissenting, proposed a de-

cree somewhat like that issued by the trial court here. Justice Black urged a decree which "would simply forbid the use of the union-shop contract to bar employment of the six protesting employees so long as the unions do not discontinue the practice of spending union funds to support any causes or doctrines, political economic or other, over the expressed objection of the six particular employees." 367 U.S. at 794.

However, Justice Black's view did not prevail. The Court declared that "an injunction against enforcement of the union shop itself through the collection of funds is unwarranted." 367 U.S. at 772. Instead the Court approved two remedies as appropriate (367 U.S. at 774-775):

> "One remedy would be an injunction against expenditure for political causes opposed by each complaining employee of a sum, from those moneys to be spent by the union for political purposes, which is so much of the moneys exacted from him as is the proportion of the union's total expenditures made for such political activities to the union's total budget. * * * A second remedy would be restitution to each individual employee of that portion of his money which the union expended, despite his notification, for the political causes to which he had advised the union he was opposed."

Even under Justice Black's view, however, the decision below could not be sustained, for the plaintiffs here have not expressed objections to any particular uses of union funds.

That the courts below misconstrued *Street* is further apparent from the decision in the companion case, *Lathrop* v. *Donohue*, 367 U.S. 820, involving the Wisconsin integrated bar. In that case the opinion of Mr. Justice Brennan, in which three other Justices joined, points out (367 U.S. at 845-846):

> "* * * Nowhere are we clearly apprised as to the views of the appellant on any particular legislative issues on which the State Bar has taken a position, or as to the way in which and the degree to which funds com-

> pulsorily exacted from its members are used to support the organization's political activities."

This opinion goes on to note that (just as in the present case) the complaint alleged that the State Bar used its funds in opposition to legislation which was favored by the plaintiff, but (just as here) this allegation was not proved, for (367 U.S. at 846) "there is no indication of the nature of this legislation, nor of appellant's views on particular proposals."

Finally, the opinion states (367 U.S. at 847):

> "* * * This statement of the question [i.e., in appellant's brief], just as does his complaint, appears more a claim of the right to be free from compelled financial support of the organization because of its political activities, than a challenge by appellant to the use of his dues money for particular political causes of which he disapproves."

Accordingly the Court affirmed the dismissal of the complaint and declined, on the record before it, to rule on whether "appellant may constitutionally be compelled to contribute his finanical support to political activities which he opposes." 367 U.S. at 847-848.

Here, just as in *Lathrop* v. *Donohue*, plaintiffs are presenting more a claim of the right to be free from compelled financial support of the unions because of the unions' political activities, than a challenge to the use of dues money for particular political causes of which the plaintiffs disapprove. Thus *Lathrop* v. *Donohue* requires reversal of the decree below just as does *Street*.

II

The Street Decision Should be Overruled

We are aware that the Court's decision in *Street* was rendered after long deliberation and after reargument. However, the Court's interpretation of the 1951 amendment to the Railway Labor Act (§ 2, Eleventh) is based on the

legislative history of the amendment, plus the avoidance of constitutional doubts. Since none of the parties to the litigation conceived that the amendment could be given the interpretation which the Court ultimately gave it,[3] the legislative history was not fully briefed or argued.

We believe that we can show beyond cavil that the Court flagrantly misconstrued the legislative history of the 1951 amendment.

Insofar as the decision in *Street* rests on the avoidance of constitutional issues it is, we submit, likewise untenable, and is inconsistent with the decision rendered the same day in *Lathrop* v. *Donohue*. No constitutional issues of substance are presented even if the statute is read as it is written.

We therefore urge that the Court reconsider its decision in *Street*, and that it adopt the views expressed in the dissenting opinion of Justice Frankfurter in that case.[4]

A. The Legislative History of the 1951 Amendment

The Court's opinion in *Street* contains a lengthy review of the legislative history of the 1951 amendment (367 U.S. at 750-764). The Court quotes the testimony of Mr. George M. Harrison before the House Committee to the effect that both collective bargaining and grievance adjustment in the railroad industry are more expensive than in any other industry, and the Court declares (367 U.S. at 762): "This argument was decisive with Congress." According to the

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[3] As stated by Mr. Justice Frankfurter, dissenting (367 U.S. at 803):

> "None of the parties in interest at any time suggested the possibility that the statute be construed in the manner now suggested."

[4] The opinion of the Court in *Street* has not evoked the admiration of legal scholars. Professor Wellington, for example, describes it as "a slick but shallow performance." Wellington, *Machinists* v. *Street*: Statutory Interpretation and the Avoidance of Constitutional Issues, Sup. Ct. Rev. (1961) 49, 73.

Court (367 U.S. at 763-764) "this history clearly points" to the conclusion that the amendment

> "contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements."

Conversely, the amendment did not contemplate, the Court declares, any more general use of union dues—at least not their use for political causes over the objections of employees opposed to those causes.

The Court's review of the legislative history blandly overlooks the obvious. It is apparent on the face of the 1951 amendment of the Railway Labor Act that its unusual terminology was lifted from § 8(a)(3) of the Taft-Hartley Act, and that its purpose was to place unions in the railroad and airline industry on a parity (§ 14 (b) apart) with unions in other industries.

In its review of the legislative history in the *Street* opinion, the Court, however, ignores the Taft-Hartley Act. It treats railway labor legislation as if it were sui generis, as if its development were unrelated to labor legislation developments affecting industry generally. On the basis of this rewriting of history the Court gives the 1951 amendment a peculiar and restrictive interpretaton unrelated to its language or purpose.

The Court's review of legislative history skips from the 1934 revision of the Railway Labor Act, which prohibited union security agreements, to the 1951 amendment, which permitted them. The Court ignores the fact that in 1935 the Wagner Act was passed containing provisions (§ 8(3)) which permitted the closed shop; that in 1947 the Taft-Hartley Act revised these provisions (§ 8(a)(3)) to permit a type of union shop; and that the 1951 amendment to the Railway Labor Act derives directly from the Taft-Hartley Act.

What is apparent on the face of these laws is confirmed

by even the most cursory examination of the legislative history.

The amendment originated as a Senate bill. The Report of the Senate Committee states (S. Rep. No. 2262, 81st Cong., 2d Sess., pp. 2-3):

> "The present prohibitions against all forms of union security agreements and the check-off were made part of the Railway Labor Act in 1934. They were enacted into law against the background of employer use of these agreements as devices for establishing and maintaining company unions. * * *
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> * * *
>
> "Since the enactment of the 1934 amendments, company unions have practically disappeared. Labor organizations representing employees in industries covered by the Railway Labor Act now seek to gain for themselves the right to bargain collectively with regard to union-shop agreements and check-off. *This right is possessed by unions representing employees in industry generally. Your Committee is of the opinion the right should now be extended to labor organizations subject to the Railway Labor Act.*" (Italics added.)

The Report of the House Committee is quite similar. Following the "free rider" passage quoted by the Court in *Street* (367 U.S. at 762), the Report continues (H. R. Rep. No. 2811, 81st Cong., 2d Sess., p. 4):

> "The principle of authorizing agreements for the union shop and the deduction of union dues has now become firmly established *as a national policy for all industry subject to the Labor-Management Relations Act of 1947*, including transportation industries other than railroads and airlines. * * *
>
> "*No sound reason exists for continuing to deny to labor organizations subject to the Railway Labor Act the right to negotiate agreements with railroads and airlines of a character permitted in the case of labor organizations in the other large industries of the country.*" (Italics added.)

Apart from the general "free rider" argument set forth in the House Report and quoted in *Street*, neither Committee Report contains a word about the "costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes" (367 U.S. at 764) which the Court so stresses in *Street*. The Court's conclusion (367 U.S. at 762) that the testimony of Mr. Harrison that bargaining and contract administration in the railroad industry are peculiarly expensive "was decisive with Congress" is startling. Neither Mr. Harrison's testimony nor the substance of his argument is adverted to in either Committee Report. To the contrary, the Committees were simply concerned to place railroad unions on a parity with other unions, by amending the Railway Labor Act so that it would parallel the Taft-Hartley Act.

The congressional debates, too, show precisely that motivation, and no other.

Senator Hill handled the bill on the floor of the Senate. He said (96 Cong. Rec. 15736):

> "Senate bill 3295 * * * would relax the prohibitions contained in paragraphs fourth and fifth of the Railway Labor Act by *restoring* to carriers and their employees the right to bargain collectively with regard to the union shop and the check-off. *In the limitations imposed and the nature of the right granted, the bill closely follows the pattern of parallel provisions of the Taft-Hartley Act.*" (Italics added.)

Subsequenty he reiterated (96 Cong. Rec. 15737):

> "The bill, as I have stated, is designed merely to extend to employees and employers subject to the Railway Labor Act rights now possessed by employees and employers under the Taft-Hartley Act in industry generally. Its pattern is that of comparable provisions of the Taft-Hartley Act and no substantial reason exists to warrant the continued denial to the employees and employers of our great railroad and airline industries of the right to bargain collectively with respect to the union shop and check-off."

Senator Taft, the ranking minority member of the Committee, advanced precisely the same ground for enacting the bill. He said (96 Cong. Rec. 16267):

> "In effect, *the bill inserts in the railway mediation law almost the exact provisions*, so far as they fit, *of the Taft-Hartley law*, so that the conditions regarding the union shop and the check-off are carried into the relations between railroad unions and the railroads. I believe that those provisions have worked satisfactorily under the Taft-Hartley law. I feel that they would work well in connection with the Railway Labor Act." (Italics added.)

The Senate debate does not in the slightest degree support the notion that in authorizing unions in the railroad and aircraft industries to negotiate union shop agreements the Senate was influenced by the peculiarly complex and expensive nature of collective bargaining in the railroad industry. To the contrary, the Senate appears to have been motivated solely by the belief that fairness required that those unions be given the same rights as had been given other unions by Taft-Hartley.

The House debates reveal substantially the same picture. The bill was handled on the House floor by Representative Beckworth. In his initial presentation he said (96 Cong. Rec. 17047):

> "One of the pieces of legislation that was considered most carefully in this body was the so-called Taft-Hartley bill. It is the contention of Senator Taft, and I expect to read one of his statements about this legislation, that, to some extent at least, *this particular measure simply carries into the provisions of the Railway Labor Act some of the provisions which already are in the Taft-Hartley law.*" (Italics added.)

Representative Beckworth's explanation of the bill was followed by one of Representative Clare Hoffman's standard tirades against unions. In the course of his Philippic Congressman Hoffman said (96 Cong. Rec. 17049-17050):

> "There is one other piece of advice, unasked, I am giving to the railway unions. It is this: That they should quit levying political assessments or assessments for the benefit of some union officials and, through the use of this legislation now before us, force their members to meet those assessments—especially those for political purposes—as a condition of an opportunity to earn a livelihood."

It will be noted that Representative Hoffman did not suggest that the bill would *require* the unions to follow his advice. Representative Hoffman went on to explain that he opposed both the closed shop and the union shop, and he asked himself (p. 17050), "Why, then, will I vote for the bill"? His answer:

> "* * * because I do not want the railway unions to say, even though it would not be true, that I refused to extend to their membership the opportunity for a union shop which was given to other employees by the Taft-Hartley Act."

Representative Wolverton spoke next. He first advanced the standard argument that justice and fairness required that railroad unions be given the rights given other unions by Taft-Hartley (96 Cong. Rec. 17050):

> "As I see it, the matter before us is very simple. It is merely a question of whether the Congress desires to continue to deny to railway labor the right by collective bargaining with management to negotiate union-shop agreements when we have protected by the Taft-Hartley Act that right in all industries except those subject to the Railway Labor Act.
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> * * *
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> "I do not see how in justice and fairness we can continue to deny this right to the employees in our great railroad and airline industries and at the same time grant such rights to all others, as we do under the provisions of the Taft Hartley Act."

Subsequently Representative Wolverton did state—and as far as we can find it was the only time the point was

made during the Congressional debates—that the costs of the railroad brotherhoods were particularly high because of the complex collective bargaining processes in that industry, and because their members were scattered. He then, however, reverted to his initial point that the bill simply incorporated the Taft-Hartley provisions in the Railway Labor Act. Various other Congressmen likewise advanced this reason for supporting the bill, e.g., Biemiller, Brown, Hugh Scott (17055), Heselton (17056), Crosser (17057), Linehan (17058), and Vursell (17061).

Rarely has there been such Congressional unanimity as to the reason for passing a bill. Rarely has the Court so flagrantly twisted legislative history as it did in the *Street* case. The Court's performance calls to mind the blind men and the elephant, and if the simile is inexact it is because the Court seized upon an aspect of the legislative history which is hardly there at all.

Congress intended to give unions in the railroad and airline industries exactly the same rights with respect to union security agreements that unions in other industries had under Taft-Hartley. The Court's conclusion in *Street* that the Congress intended only to permit unions in the railroad and airline industries to collect from dissenters a pro rata share of collective bargaining costs, and because bargaining in the railroad industry is peculiarly expensive, requires not merely a selective editing of history but a drastic rewriting.

As Justice Frankfurter demonstrated in his dissent, American trade unions in general and railroad unions in particular have engaged in political and legislative activity for decades and on a large scale.[5] It can hardly be suggested

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[5] The Brief Amicus for the AFL-CIO in *Street* was comprised principally, as the Motion for Leave to File stated, of

"an outline of historical and economic data establishing that political activity has traditionally been an integral and vitally essential feature of the workers' program for improving their lot through organized action."

that the Congress was unaware of this activity either when it enacted the Taft-Hartley Act in 1947 or the amendment to the Railway Labor Act in 1951.[6] To say that Congress nevertheless had the hidden purpose in enacting the 1951 amendment, that dues collected under union security agreements should not be used for political or legislative purposes, or should only be used for collective bargaining costs, is little short of preposterous.[7]

Insofar as the interpretation given § 2, Eleventh in *Street* rests on the legislative history of the 1951 amendment, it is without visible means of support.

B. The Constitutional Issue

Insofar as the interpretation given § 2, Eleventh in *Street* rests on the avoidance of constitutional doubts, it is equally unsupported.

Since the opinion of the Court rests indirectly, and the concurring opinion of Justice Douglas and the dissenting opinion of Justice Black directly, upon the First Amendment, the question arises as to how the 1951 amendment abridges the freedom of speech or assembly, or might if not given the construction put on it by the Court. The opinion of the Court does not explicity answer this question: it does not identify the monster whose menace leads it to take such violent evasive action.

Hence we are forced to speculate as to what comprises the governmental action which gives, or might give, rise

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[6] The opinion of the Court in *Street* states (367 U.S. at 767):

"We may assume that Congress was also fully conversant with the long history of intensive involvement of the railroad unions in political activities."

[7] During the Senate Committee hearings, two railroad officials did urge that restrictions be placed on the use of dues and assessments, such as for political purposes or death benefits. (Hearings on S. 3295, 81st Cong., 2d Sess., on May 23, 1950, pp. 316-317.) The proposal evidently did not commend itself to the Committee.

to a constitutional question under the First, or perhaps the Fifth, Amendment.

1. *The Superseding of State Law.* In *Hanson* the Court seemingly held that the 1951 amendment to the Railway Labor Act imbued contracts made thereunder with the quality of governmental action, justiciable under the First and Fifth Amendments, because the amendment overrode inconsistent state laws—the so-called "right-to-work" laws. See 351 U.S. at 232-233.

If it is the superseding of inconsistent state law by the 1951 amendment which gives union security contracts executed thereunder an aspect of governmental action, it would follow that only such contracts in right-to-work states present any constitutional question. *Otten* v. *B. & O. Railroad*, 205 F. 2d 58 (2d Cir. 1953), *aff'd sub nom. Otten* v. *Staten Island Rapid Transit Ry.*, 229 F. 2d 919 (2d Cir. 1956), *cert. denied*, 351 U.S. 983. No constitutional issue would be presented by state laws permitting union security agreements —or even imposing the closed shop. But cf. *Lathrop* v. *Donohue*.

However, this rationale, that it is the superseding of state law that comprises governmental action, is not so much as hinted at in any of the opinions in *Street*, and in any event it seems wholly untenable. A federal statute declaring that an activity shall not be regulated by the states does not, without more, invest the activity with governmental character. The Taft-Hartley Act has, under familiar doctrines of preemption, freed a wide range of union and employer activities from state regulation, but it will hardly be suggested that all of those activities are thereby rendered governmental.

2. *The Imposition of the Union Shop by Law.* The dissenting opinion of Justice Black in *Street* seems to treat the 1951 amendment as if it imposed the union shop by governmental fiat, instead of simply relaxing existing legal restraints on the execution and enforcement of such agree-

ments.* And while the opinion of the Court in *Street* does not employ this approach, the opinion of Justice Brennan in *Lathrop* v. *Donohue* declares that "In our view the case presents a claim of inpingement upon freedom of association no different from that which we decided in" *Hanson*. 367 U.S. at 842. Since *Lathrop* v. *Donohue* involved an integrated bar imposed by judicial fiat, this statement seems, at least superficially, to equate a permissive union shop with a government imposed closed shop.

We submit that the two are very different. Throughout most of the existence of the United States unions and employers have been free to negotiate agreements, if they saw fit, providing for a closed or union shop. This freedom was taken away by Congress in the case of the railroad and airline industries in 1934, and was restored in 1951. As the House Report (p. 2) explained, the bill would "reinstate union security and check-off arrangements as appropriate subjects for collective bargaining" in the railroad and airline industries.

As the Court said in *Colgate-Palmolive-Peet Co.* v. *NLRB*, 338 U.S. 355, 362-363:

> "'One of the oldest techniques in the art of collective bargaining is the closed shop. It protects the integrity of the union and provides stability to labor relations. To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act. Congress knew that a closed shop would interfere with freedom of employees to organize in another union and would, if used, lead inevitably to discrimination in tenuer of employment. Nevertheless

* The dissenting opinion of Justice Black states that although the amendment "is permissive in form," Congress was aware that it would result in the establishment of union shop throughout the railroad industry. 367 U.S. at 785, note 13. Thereafter this opinion employs such terminology as "federal compulsion" (789), "this Act of Congress is being used as a means to exact money" (790). "dues extorted from an employee by law" (790), and "forced under authority of a federal statute" (796).

> * * * Congress inserted the proviso of § 8(3). It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute."

The Court has, accordingly, always regarded legislation permitting the closed or union shop as presenting simply a question of policy for the Congress and not a constitutional question for the Court.

On the other hand, a statute requiring membership in a union, or a court rule requiring membership in a bar association, clearly do involve governmental action, and hence may present a constitutional issue, just as does a statute prohibiting the closed or union shop. *Lincoln Federal Labor Union* v. *Northwestern I. & M. Co.*, 335 U.S. 525.

Certainly the Congress has regarded a permissive and a mandatory union shop as very different.

The Senate Committee Report on the 1951 amendment to the Railway Labor Act declared (S. Rep. No. 2262, 81st Cong., 2d Sess, p. 1):

> "The bill would not require the execution of union shop agreements; it merely permits the carriers and the representatives of their employees, through the voluntary process of collective bargaining, to include the union shop provisions in their collective-bargaining agreements."

The House Report contained a similar declaration, and statements that the bill was permissive and not compulsory were repeated endlessly and never denied during the debates. No opponent of the bill suggested that it was equivalent to government imposition of the union shop.

In sharp contrast, in 1947, during the consideration of the union shop provisions of Taft-Hartley, an amendment was offered in the Senate that "an employer shall be required to accept and establish a union shop" if three-fourths of the employees vote in favor of it.[9] Senator Taft attacked

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[9] 93 Daily Cong. Rec. 5077; Legislative History of the L.M.R.A., V. 2, p. 1400.

the proposed amendment as unconstitutional because it would make the union shop mandatory rather than leave it to negotiation,[10] and the proposal was defeated.[11] The Senate then proceeded to approve, overwhelmingly, the permissive union shop provisions of Taft-Hartley,[12] which were in 1951 transported into the Railway Labor Act.

The undoubted fact that union security agreements are prevalent, both under the Railway Labor and Taft-Hartley Acts, falls far short of implying that those statutes compel their execution. Agreements for the final and binding arbitration of disputes arising during the life of a contract are equally prevalent, but they are not compelled by law either. In both instances the prevalence is due not to any compulsion in the law but to the fact that the parties find the provisions mutually advantageous, or that one party finds a provision so advantageous that it offers inducements to the other party sufficient to procure its acquiescence.

In *Hanson* the Court said (351 U.S. at 231):

> "The union shop provision of the Railway Labor Act is only permissive. Congress has not compelled nor required carriers and employees to enter into union shop agreements."

We submit that that was a correct statement, and that governmental action cannot be read into the purely permissive 1951 amendment. As regards this aspect, it is surely anomolous that the Court affirmed dismissal of the complaint in *Lathrop* v. *Donohue*, while it remanded *Street* for further consideration.

3. *The Authorization to Spend Dues Money.* While, as stated, the opinion of the Court is quite reticent about

[10] Senator Taft inserted in the Record a memorandum, prepared by Gerard D. Reilly, on the constitutionality of the amendment. 93 Daily Cong. Rec. 5079; Leg. Hist., V. 2, p. 1403. The memoradum attacked the proposal as violative, because of its mandatory character, of both the rights of employers and of minority employees.

[11] 93 Daily Cong. Rec. 5081; Leg. Hist., V. 2, p. 1408. The amendment was rejected by voice vote. Only two Senators spoke in favor of it.

[12] 93 Daily Cong. Rec. 5091; Leg. Hist., V. 2, p. 1428.

identifying the governmental action which might be unconstitutional, it seems to say that the 1951 amendment might be invalid if construed as "vesting the unions with unlimited power to spend exacted money." 367 U.S. at 768. Therefore

> "we hold • • • § 2, Eleventh is to be construed to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes." 367 U.S. at 768-769.

This identification of the source of the governmental action seems an even clearer case of mistaken identity than those discussed earlier. There is no need to interpret the 1951 amendment as authorizing unions to spend money: hence the asserted constitutional difficulty is mythical.

The power of a union to spend money is not derived from statute, any more than in the case of any other unincorporated association. When they spend money unions engage in a private, not a governmental activity. That private activity may be subject to governmental regulation,[13] but no affirmative governmental authorization is needed to engage in it. That the funds derived from dues paid by employees subject to a union shop agreement does not mean that any statutory authorization is needed for disbursement of the funds, though it may (or may not) argue for legislative restrictions on the uses to which the funds may be put. No union ever had any statutory authorization for the expenditure of funds, whether or not derived from dues paid by persons subject to union security clauses, from colonial time to date, until in *Street* the Court put its peculiar gloss on § 2, Eleventh of the Railway Labor Act.

[13] Cf. the following statement in *Street* (367 U.S. at 773):

"• • • Whatever may be the powers of Congress or the States to forbid unions altogether to make various types of political expenditures, as to which we express no opinion here, many of the expenditures involved in the present case are made for the purpose of disseminating information as to candidates and programs and publicizing the positions of the unions on them. As to such expenditures an injunction would work a restraint on the expression of political ideas which might be offensive to the First Amendment."

Since there was no need to interpret § 2, Eleventh as authorizing unions to spend funds, there was no constitutional problem to be avoided. The interpretation of § 2, Eleventh as restricting unions in their use of funds thus has no basis either in the avoidance of constitutional doubts, or in its language, or in its legislative history.

The Court's rationale in *Street* (if we correctly interpret it) poses a number of difficulties for the future.

The Court has read into § 2, Eleventh both an authorization to spend union shop dues money for some purposes over the objections of dissenters, and restrictions on their use for other purposes over the objections of dissenters.

If the Court adheres to *Street*, the legality of every challenged disbursement of union shop dues money will be determined by § 2, Eleventh—as "interpreted" by the courts from time to time.[14] The statutory language will provide no guide, for it never occurred to Congress that the provision would be read as regulating the uses of union dues.[15]

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[14] In *Street* the Court said (367 U.S. at 769-770):

"We express no view as to other union expenditures objected to by an employee and not made to meet the costs of negotiation and administration of collective agreements, or the adjustment and settlement of grievances and disputes. We do not understand * * * that there is before us the matter of expenditures for activities in the area between the costs which led directly to the complaint as to 'free riders,' and the expenditures to support union political activities."

[15] Wellington, op. cit. supra note 4, states (p. 70):

"If in the future the Court must decide whether the expenditure of money by a union is for political or collective bargaining purposes, *i.e.*, in the language of *Hanson*, whether the money is used for purposes 'germane to collective bargaining,' the Court must measure union action in each case against nonexistent standards, in the same fashion that courts in the past tried to determine whether unions seeking various goals were privileged to use various types of concerted action.

"Thus, it seems that the Court, in *Street*, unhappily has contrived to entangle itself in legislating about collective bargaining * * *."

The avoidance of constitutional doubts will provide no guide, for the doubts are ill defined and insubstantial.

Again, although the Court purported to base its decision on the legislative history of § 2, Eleventh, and especially on the supposed concern of Congress that collective bargaining and contract administration are peculiarly expensive in the railroad industry, the argument will no doubt be made that constitutional doubts require that § 8(a)(3) of Taft-Hartley be given the same tortured construction as § 2, Eleventh of the Railway Labor Act. Will the Court then undertake to read into § 8(a)(3), first, an authorization to spend union shop dues money, and, secondly, various restrictions on that authorization? [16]

On the basis of amorphous constitutional doubts the Court has undertaken to regulate the use of union funds. We submit that that is not properly a function of the Court, or one for which it is well qualified. If the use of union funds is to be regulated, it is for Congress to do it. It

> "is a complex and highly political problem. It necessarily requires investigation and regulation more appropriately conducted by the legislature than by the courts." 61 Col. L. Rev. 1513, 1518 (1961).[17]

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[16] Cf. Wellington (p. 70):

"It will not be long before a dissenting employee asserts that the Taft-Hartley's union shop is unconstitutional. When that happens it will be difficult indeed for the Court to read Taft-Hartley in the way in which it has read the Railway Labor Act. As we have seen, it cannot be said that in 1947 Congress was cutting back on a freedom it had earlier granted dissenting employees. Nor can it be asserted that unions regulated by Taft-Hartley had traditionally been uninterested in union security. These propositions were made by the *Street* majority about congressional performance in 1951, and about unions regulated by the Railway Labor Act. They were advanced by that majority as weighty reasons for its reading of Section 2, Eleventh. They are not available as bases for reaching a like conclusion in a Taft-Hartley case. The constitutional questions left unresolved by *Street* will yet have to be resolved by the Court."

[17] To the same effect, see Wellington, p. 72.

The Congress has imposed certain restrictions on union expenditures for political purposes, and has considered others. Section 304 of Taft-Hartley, now § 610 of Title 18, prohibits a union (or corporation) from making a contribution or expenditure in connection with a federal election. This provision applies to all unions, including those subject to the Railway Labor Act, and to all union funds, whether or not dues money paid under union security clauses.

In 1956 Senators Curtis and Goldwater introduced a bill, S. 3074, which, like the Court's decision in *Street*, imposed special restrictions on the use of funds for political purposes by unions having union security agreements. This bill tightened up § 304 of Taft-Hartley as to unions having union secuirty agreements, and also amended § 8(a)(3) of Taft-Hartley to prohibit a union from making a union security agreement if it had within two years made a contribution or expenditure in connection with a federal election. The bill did not pass.

In *Street* (367 U.S. at 770, note 19) the Court refers to a 1958 proposal by Senator Potter to restrict the use of union shop dues, which failed of adoption. However, it does not refer to § 501(a) of the Landrum-Griffin Act,[18] enacted the following year, which has greater significance. This provision declares that the officers of a union occupy positions of trust, and that—

> "* * * It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder * * *."

When the predecessor of this provision was introduced

[18] Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 535, 29 U.S.C. § 501(a)).

by Senator McClellan, the question arose whether the Senator was seeking to restrict the purposes for which unions could spend money, and in particular whether he was seeking to regulate the use of union funds for political purposes? (Senator McClellan was known to take a certain interest in the subject.)

The following colloquy ensued (105 Cong. Rec. 6525):

> "Mr. KENNEDY. * * * I am concerned lest we place a restraint on the purposes for which money may be properly and honestly spent, in our attempt to safeguard union funds.
>
> "Mr. McCLELLAN. I do not believe we are proposing to do that. It is not my purpose to do that.
>
> "A union may wish to conduct an educational program. I am not opposed to such programs. I think a union should have the right to conduct educational programs. I never wish to deny to a union the right to participate in the affairs of society and of our country.
>
> "It is possible that at times the right may be abused, but I defend the right of a union, a corporation, or any other institution, to discuss any proper subject, from the standpoint of education, from the standpoint of enlightenment, or from the standpoint of conveying its views on any public issue. I believe in that right. I would never take it away. I am not striving to do anything of the kind. I am merely seeking to firm up and nail down the fiduciary responsibilities which I believe union officers should have in the financial field."

Subsequently Senator McClellan was even more explicit (105 Cong. Rec. 6526):

> "* * * If the Senator has any thought that I am trying to interfere with COPE, [19] that is not correct. There may be amendments directed to that point, and to deal with that direct question. However, I am not offering my amendment on the direct question of political contributions. Everyone knows my views on that subject, I assume. This is not a drive at that situation."

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[19] The reference is to the AFL-CIO's Committee on Political Education, *i.e.*, its political arm.

Thus by § 501(a) of Landrum-Griffin the Congress imposed on unions the requirement that they expend their funds in accordance with their constitutions and bylaws, but the Congress did not restrict the purposes for which unions might spend their funds if their constitutions and bylaws so authorized. In particular Congress did not add to the restrictions imposed by § 304 of Taft-Hartley on the use of union funds for political purposes.

This Court in *Street* has thus undertaken to do what Congress has several times considered but decided against doing. The Court has legislated restrictions on the use of union funds. Insofar as the *Street* decision rests on interpreting § 2, Eleventh as restricting the uses to which union funds may be put, we submit that the Court has usurped the role of Congress.[20]

4. *The Power to Bind Dissenters.* A possible basis for finding governmental action, which may well be implicit in the Court's opinion in *Street*, is the status as exclusive bargaining representative which the law confers on a union chosen by a majority of the employes. Under the system of collective bargaining which developed in this country and was ultimately embodied, in 1926 and 1935, in federal statutes,[21] if a majority of employes in a plant or other unit choose to be represented by a union the employer must bargain with it and the agreement reached is binding on all the employes in the unit whether they join the union or not or like the contract or not. As the Court said in *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 202:

"* * * Congress has seen fit to clothe the bargaining

[20] Wellington, op. cit. supra note 4, puts it this way (p. 73):

"That interpretation was unfortunate because in one way or another it constituted judicial legislation about collective bargaining. The courts have never done this well. Judges do not have standards by which to test union action. They cannot ascertain union needs. They act half in blindness, and the results are seldom happy."

[21] *E.g.*, the Railway Labor Act and the National Labor Relations Act.

> representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents * * *."

This power to execute a collective bargaining agreement which is binding on dissenters, includes the power to execute a contract requiring membership as a condition of employment subject, of course, to the statutory restrictions.

While this system could have developed, and did, without statutory authorization or sanction, the federal laws now provide an element of compulsion—or governmental action—in that they require employees to abide by the system whether they wish to or not. Cf. *J. I. Case Co.* v. *NLRB*, 321 U.S. 332. This provides some basis for concluding that the functioning of a union as exclusive bargaining representative involves some degree of governmental action.

However, we submit that this type of governmental action is not sufficient to give rise to the serious constitutional doubts which assertedly support the *Street* decision.

In the first place, the degree of governmental action involved is rather slight. It has not been considered sufficiently substantial to require that a union admit to membership all the employees it represents,[22] though that would seem to be a minimum consequence of regarding collective bargaining as imbued with governmental character. This Court itself remarked in *American Communications Assn.* v. *Douds*, 339 U.S. 382, 402:

> "We do not suggest that labor unions which utilize the facilities of the National Labor Relations Board become Government agencies or may be regulated as such."

In the second place, if the binding of dissenters by a collective bargaining agreement constitutes governmental ac-

[22] Taft-Hartley Act, § 8(b)(1)(A); *Oliphant* v. *Brotherhood of Locomotive Firemen and Enginemen*, 262 F. 2d 359 (6th Cir. 1958), *certiorari denied*, 359 U.S. 935; see *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 204. The AFL-CIO has supported legislation which would require unions to admit all qualified applicants, but no such legislation has as yet been enacted.

tion, it is not merely the union security provisions which bind dissenters, but a wide range of other provisions.

Under a system of collective bargaining the contract which the union negotiates may determine all the major terms of a worker's industrial life. It may determine whether he gets paid $3.00 an hour or $1.25 an hour; whether he works a 35 hour week or a 40 hour week; whether he is subject to discharge only for cause, with the right to go to arbitration, or at the whim of a foreman; whether layoffs are made according to seniority or favoritism; etc. The collective agreement binds dissenters in all of these matters. In this context a requirement that the workers pay dues is an integral part of the whole concept of collective bargaining. As a matter of philosophic consistency it is scarcely possible to accept collective bargaining which gives the union the power to execute a contract regulating every aspect of the worker's industrial life, while rejecting compulsory dues payment.[23] A worker is subjected to a majority rule as a citizen of the industrial community, and it is not unreasonable to require him to assume some of the responsibilities of citizenship.

It is not merely, or even principally, the union security

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[23] Put another way, collective bargaining itself puts a worker under compulsion to join the union. The fact that the union will negotiate the contract which regulates the incidents of his industrial life itself puts him under powerful compulsion to join the union, since that is the only way he can have a voice in determining the provisions of the collective agreement. A senior employee who wants the union to forego a wage increase in favor of improved pensions not only has to join the union but to be active in it if he is to have any hope of making his views prevail. That sort of compulsion to join is inherent in collective bargaining.

On approximately that theory the Supreme Court of Louisiana ruled that under the state right-to-work law a collective bargaining agreement could not bind non-members. *Piegts* v. *Meat Cutters, Local 137*, 228 La. 131, 81 So. 2d 835, 36 LRRM 2261 (La. Sup. Ct. 1955). We are not, of course, suggesting that the Louisiana Court was correct—only that it was logical.

provisions of a contract, or the way dues money is spent, that sometimes gives rise to dissent. As shown supra, pp. 7-8, all of the plaintiffs in this case were very vague as to any disagreements with the unions on legislative or political issues. On the other hand, two of the plaintiffs complained that they had been transferred from monthly to daily rated jobs as a result of collective bargaining contracts (R. 45, 49-50), while another complained that a reduction in working hours negotiated by the union had, even though accompanied by an increase in wage rates, reduced his take home pay. (R. 72-74.) It is inevitable that in every dispute over seniority some employees will dissent from the union's position.

Thus the proposition, that the binding of dissenters by a collective bargaining agreement constitutes governmental action, proves too much, for it would subject innumerable provisions of every agreement to constitutional tests. That concept was rejected in *NLRB* v. *Jones & Laughlin Steel Corp.* 301 U.S. 1; *J. I. Case Co.* v. *NLRB*, 321 U.S. 332, and numerous other cases. As the Court said in *J. I. Case*, 321 U.S. at 339:

> "* * * The workman is free, if he values his own bargaining position more than that of the group, to vote against representaton: but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result."

And cf. *Ford Motor Co.* v. *Huffman*, 345 U.S. 330.[24]

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[24] Wellington states (pp. 72-73):

"* * * no existing legal doctrine compels the Court to test union action by constitutional standards. Rather, it would require an extension of existing doctrine, doctrine contained in the landmark cases of *Shelley* v. *Kraemer*, *Smith* v. *Allwright*, and *Terry* v. *Adams*, to permit such a result. While an extension of this doctrine to cover union action would not be an illogical development of constitutional law, it would, if the above considerations are valid, be a plainly unwise development." (Footnotes omitted.)

In the third place, in *Street* the Court seems to assume that, though dissenters may constitutionally be required by a collective agreement to pay dues, the compulsion involved colors the expenditure of the dues money, so that expenditures must meet tests imposed by the Constitution, and not merely by statute or by the union's own constitution and bylaws. This assumption seems extravagant, in view of the remote and tenuous character of the governmental action involved.

CONCLUSION

We submit that there is no doubtful constitutional question in this case because no substantial governmental action is involved in the execution of a union shop agreement, and no governmental action whatever is involved in a union's use of its funds for political or any other activities. There are only "questions not of constitutional validity but of policy in a domain of legislation peculiarly open to conflicting views of policy." Frankfurter, J., concurring in *Railway Employes' Department* v. *Hanson*, 351 U.S. 225, 239. Those questions of policy are properly for the Congress, not the Court.

Since there are no substantial constitutional doubts to be avoided, there is no basis for the tortured construction given section 2, Eleventh of the Railway Labor Act in the *Street* case.

However, even if the Court adheres to *Street*, as we think it should not, the decision below is, we have sought to show, not sustainable under *Street*.

For the foregoing reasons, and for the reasons stated in the brief for petitioners, we submit that the judgment of the Supreme Court of North Carolina should be reversed and the case remanded to that Court, with instructions to reverse the judgment of the Superior Court of Mecklenburg County with remittitur to the Superior Court directing it

to vacate its judgment of May 15, 1958 (R. 22-23), and to dismiss the case.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES AND BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA,

Petitioners

vs.

ANNA MAE ALLEN, ET AL,

Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE RESPONDENTS

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Appendix 1a

IN THE

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Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE RESPONDENTS

QUESTION PRESENTED

It having been established in this case that the respondent employees, unless protected by Court order, will be subjected to compulsion such as was adjudged unlawful in *International Association of Machinists vs. Street,* is the remedy which has been granted to them reasonable and appropriate and free of the defects which this Court found in the *Street* judgment?

STATEMENT OF THE CASE

The plaintiffs in this case, now respondents before this Court, are seeking protection against the same compulsion which was held by this Court to be unlawful in the case of *International Association of Machinists vs. Street*, 367 U. S. 740.

The plaintiffs have been notified by their employer and by the defendant labor unions that they will be discharged from their jobs, of long standing, unless they pay money to the defendant unions (R. 8, 13; Orig. Rec. 121-122). It has been established in this case that such money will in part be used by the unions for political purposes unrelated to collective bargaining (R. 22). The plaintiffs have refused to make such payment to the defendant unions and have declared in open Court that they deeply object to money being compulsorily exacted from them for political purposes as to which they have no opportunity of decision or choice (R. 25-50, 71-74).

It is to be observed that if these requirements be imposed upon the plaintiffs, governmental action, that is, the 1951 Amendment to the Federal Railway Labor Act[1], will be the factor which makes such compulsion possible. North Carolina, being a State which has a "right-to-work" statute[2], protecting all employees within its bounds from any such requirements, the case clearly is one in which the compulsion in question could come about only through the active intervention of Federal power.

Except for the Federal Statute, the plaintiffs' employer and the defendant unions are legally barred, by North Carolina law, from collecting any money from the plain-

---

[1]64 Stat. 1238, 45 USC 152, Eleventh.

[2]North Carolina Genl. Stat. 95-82.

tiffs "as a condition of employment". Thus it could only be the affirmative action of the Federal Statute, striking down the shield of the North Carolina Statute, which would make possible the placing of the compulsion in question upon these plaintiffs. This was expressly recognized by this Court, prior to the *Street* decision, in the case of *Railway Employees' Department vs. Hanson*, 351 U. S. 225.

In other respects also, the instant case presents and supports the position of the plaintiff employees in an especially strong and favorable light.

This case was tried not upon stipulations of evidence, as was the *Street* case, but by ordinary procedure and the presentation of evidence and testimony through examination and cross-examination before Judge and jury — a jury composed incidentally, as the Trial Court record shows, of varied and representative membership, union and non-union, men and women, white and negro. Thus, the findings of fact in this case were made not by the Court but by the jury, upon issues submitted to them in the usual manner.

The evidence included many pages of exhibits[1] setting forth by dates, names and individual amounts, literally hundreds of thousands of dollars of contributions paid to political candidates whom the higher Union officials selected as the recipients of such largess (R. 108-109; Orig. Rec. 217, 303; 218, 316, Appx. 7a-39a).

There was further voluminous evidence, such as: — copies of thirty-six special editions of a publication (Orig.

---

[1]These are all on file with this Court, but in view of their bulk, have, in the main, not been reproduced in this Court's reprint of the record. They are listed in an appendix to this brief, referred to herein as "Appx.", and two of these exhibits are there reproduced.

Rec. 198, 201, 282, 300; Appx. 1a) paid for partly out of compulsory dues money collected from employees (R. 81), espousing and pressing the election campaigns of selected candidates for the House of Representatives and Senate of the United States, and each such "special" edition running to "something less than a million copies" (R. 133) — also, for example, a "Report of the AFL-CIO Executive Council, 1957" (R. 93; Orig. Rec. 206, 283, 303; Appx. 4a) showing expenditures, likewise out of funds derived in part by defendant unions from employees' compulsory dues payments, of $92,343.01 and $139,071.74 for "legislative" purposes (R. 95-96), $232,860.72 and $618,036.12 for "international affairs" (R. 96), and $352,372.18 and $365,722.04 for "political education" (R. 96), and disclosing the use of such funds to procure the enactment or defeat of legislation in such fields as "Disclosure of FBI Files", "Enemy Alien Assets", "Juvenile Delinquency", "Hell's Canyon", "TVA" and "Pay Television" (R. 97, Orig. Rec. 206, 283, 303; Appx. 4a).

Neither the contract (R. 160) between the plaintiffs' employer, the Southern Railway Company, and the defendant Unions, requiring money payments from the plaintiffs, nor the Statute authorizing this contract, that is, the 1951 Amendment to the Federal Railway Labor Act, place any restrictions or limitations upon the amounts of money which may be exacted from the employees. Moreover, the contract runs indefinitely with no provision as to its duration or termination (R. 160-170).

Upon all of the evidence in the case, the jury, upon the several issues submitted to them, specifically found (R. 22) that "the defendant unions" do "use dues and fees" compulsorily collected from employees to procure the enactment of certain "legislation" and the defeat of other "legislation", and "to influence votes in elections to public

office", and "to make contributions to the campaigns of candidates for election to public office". The jury's further finding, anticipating the later determination of this Court to the same effect in the *Street* case, was that such political expenditures were not "necessary or reasonably related to collective bargaining" (R. 22).

The defendant unions still make the assertion (petitioners' brief p. 11), at least with respect to "contributions to the campaign funds of candidates for public office", that "none of it came from dues or fees" collected by them from employees. The difficulty with this is, of course, that after hearing all the evidence and testimony in the case, the jury found the truth to be precisely to the contrary (R. 22).

The unions vainly sought, in the Trial Court, to overturn such finding upon the plea that the evidence did not justify or sustain it. The Trial Court ruled that there was adequate and sufficient evidence upon which the jury could properly have found that the expenditures in question did come from "union dues or fees". The defendant unions presented the same argument to the Supreme Court of North Carolina, and that Court found no merit in it. The plaintiffs do not understand that the defendant unions are now raising any formal challenge on this matter, that is, as to the sufficiency of the evidence to support the jury's verdict. Nor would it be appropriate for them to undertake now to do so in this Court. *Milk Wagon Drivers Union vs. Meadowmoor Dairies, Inc.*, 312 U. S. 287, 294.

In the face of all this, however, the defendant unions now ask this Court to hold that the plaintiffs have no cause of action at all because, at some time which the defendants do not specify, the plaintiffs should have "advised" the defendant unions as to the plaintiffs' objections

to "particular candidates or causes which the Unions were spending dues money to promote" (petitioners' brief p. 19). If the Court will not upon this ground dismiss the plaintiffs' case altogether, then, the defendant unions urge, the remedy which has been granted to the plaintiffs should be held by this Court to be improper (petitioners' brief pp. 21-22).

ARGUMENT

I. The Plaintiffs' Cause Of Action Is Not Subject To Dismissal On Any Theory That The Plaintiffs Should Have Notified The Defendant Unions As To Wh "Particular" Union-Supported Candidates And Causes The Plaintiffs Oppose

To the defendant unions' contention that the plaintiffs' case must be dismissed, because the plaintiffs have not notified the unions of the union-supported political candidates or causes the plaintiffs' oppose, the first answer is that by bringing this suit and by positive and repeated testimony in open court during the course of this action, the plaintiffs made it abundantly clear to the defendant unions, and to all concerned, that they, the plaintiffs, objected to the unions' taking money from them and spending it on political causes and candidates selected by union officials without the plaintiffs having any opportunity of choice or decision in such selections.

It was thus that the plaintiffs in the *Street* case made known to the unions their objection to the unions' taking and using their money for political purposes. Yet this Court held that those plaintiffs had good standing in Court

and a valid cause of action. As the majority opinion stated:

> "The appellees who have participated in this action have *in the course of it* made known to their respective unions their objection to the use of their money for the support *of political causes*". (emphasis supplied)
>
> *International Association of Machinists vs. Street*, 367 U. S. 740, 771.

So, exactly, have the plaintiffs in the present case done.

It is clear that the purpose of the repeated language in the *Street* opinions, with respect to objection and protest, is to emphasize the necessity of an employee's taking an affirmative position of dissent and protest, if he would have the protection of Court. For this reason, the Court dismissed all requests for relief for employees in general or "as a class". Surely, however, those who, like the plaintiffs, bring suit against their employer and the unions, and take their stand in open Court, are actively expressing objection and dissent and protest.

As to the unions' present plea that the plaintiffs' protests were not specific enough, it is further to be noted that they never made any demand in the Courts below for any sort of bill of particulars.

Moreover, it seems pertinent to ask how the plaintiffs could have "advised" the unions as to which "particular" union-supported political causes and candidates the plaintiffs opposed, since the evidence in the case is that the unions never informed even their local leaders as to what candidates or causes the unions would support or oppose. For example, the President of the Charlotte Local Lodge

of the defendant, Brotherhood of Railway Clerks, testified (Orig. Rec. 107):

> "None of the officials above the Local Lodge ever informed the Local Lodge membership in any way as to what would be the policy of the national Union on any matters of legislation or political candidates".

Similarly, the Secretary-Treasurer of the same Local Lodge testified (Orig. Rec. 112, 117):

> "The North Carolina Legislative Committee of the Railway Clerks does not make any report to the Local Lodge or to the membership of the Lodge as to what they are doing or what they have done, so far as I know, or what they aim to do".

> "To the best of my knowledge I have never heard of the officials of the Grand Lodge or the System Board or the Legislative Committee in any way making it known to the Local Lodge or the Local membership what legislation or what candidates they, that is the officials, were going to favor or oppose".

Still further, the Unions' argument that the plaintiffs' case should be dismissed for failure on the part of the plaintiffs to notify the Unions as to which Union-supported political activities the plaintiffs oppose — is thoroughly amazing in view of the fact that the Unions have vigorously contended that they do not use employee dues and fees "in *any* political activity". Thus, the Union defendants declared in their brief (p. 7) before the Supreme Court of North Carolina that:

> "There is no evidence that either the Brotherhood of Railway Clerks or the Brotherhood of Railroad Signalmen engage in any political activity".

In the same brief (pp. 67, 68) they asserted that:

> "There is no credible evidence that the defendant unions used dues and fees to influence votes in elections to public office or for contributions to campaign funds".

> "The President of the Brotherhood of Railway Clerks, Mr. George M. Harrison, testified that his organization had not used funds to advance the candidacy or campaign of any person running for political office".

Since the unions contend that they do not use *any* employee dues or fees to support *any* political candidates or causes, how can they rationally argue that the plaintiffs should protest against the unions' use of their money for "particular" candidates or causes?

It is also to be observed that as they inveigh against the plaintiffs for failure to make specific protests, the unions themselves offer no specifics as to how or when or how often the plaintiffs should so "advise" them. Should the employee at each monthly dues-paying time deliver to his union a list setting forth all the candidates and causes throughout the nation supported by the union but opposed by the employee, and vice versa? And should such listing be revised by the employee each time he pays dues, as the union changes or adds to the causes and candidates it supports and opposes? And how is this to be done since the union does not inform its members, nor even its local leaders, as to who and what are its political candidates and causes — and indeed solemnly avows that it has none?

Still further, what would indeed be the purpose or the consequence of the employees' furnishing such particulars to the union? Would the union thereupon cease supporting with employees' dues, or reduce such support of, candidates

or causes whom it declares it does not support with employees' dues anyhow?

But it seems unnecessary to pursue the defendants into the absurdities of their position on this subject. It should be sufficient to note that the plaintiffs have fought this case for many years in various Courts[1], and "in the course of it" have certainly "made known" to the union defendants their clear and unmistakable objection and protest against being compelled to pay money for political purposes as to which they have no opportunity of decision or choice.

Going beyond the plaintiffs in the *Street* case and taking the witness stand to state their position, the plaintiffs in the present case testified, for example:

Meriam P. Thompson (R. 26-27): — "I am opposed to being required to pay money each month to a labor union, which the union may use for purposes upon which the union decides".

. . .

"I think every American has a right to choose for himself what he wants to do with his money he earns for himself with his own hands, without having to go through a union to do it".

. . .

"The laws which the union might support or which the union might oppose to which I object would be the right-to-work law for one thing, because I am in favor of the right-to-work law and I am sure the unions are not. Another law would be part of the Railway Labor

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[1]At one stage the union defendants took this case into the Federal Courts, from whence it was remanded by a three Judge Court to the State Courts. *Allen, et al vs. Southern Railway Co., et al,* 114 F. Supp. 72.

Act, specifically what we are here in Court fighting today. This is the union shop agreement provisions of the Railway Labor Act. Those two laws specifically are the ones I have in mnd".

Craven Smith (R. 28-29): — "Q. If the evidence in this case, Mr. Smith, should show that the Railroad Unions require employees of the Southern Railway to pay money to them in order for those employees to keep their jobs, and that the Railway Unions then take that money and use part of it to support certain legislation and to oppose other legislation, to support and influence campaigns for certain political candidates and elect certain candidates and to defeat other political candidates, what is your position with respect to such use of dues money taken from you againt your will?"

"A. I am definitely opposed to such activity. I am opposed to such use of my money because it strikes at the foundation of our American life. I think every American should be free to join what he pleases and use the money that he earns the way that he wants to".

. . .

"I know that North Carolina has the right-to-work law. I am in favor of that law. I am not in favor of having any money taken from me against my will and used to repeal that law. I know that the 1951 Amendment of the Federal Railroad Labor Act made the union shop agreement possible. I am not in favor of that law but I am against it. I am not agreeable to having money taken from me against my will and used to maintain that law in effect".

George E. Atwell (R. 32): — ". . . I certainly am opposed to them (the unions) advocating or endorsing candidates . . . I would say that when the Unions endorse

candidates who are in favor of continuing that portion of the Railway Labor Act which permits the union shop, I am opposed to that".

Harold B. Hackney (R. 72): — "Q. Now, Mr. Hackney, if the evidence in this case should establish, or tend to establish, that the moneys which would be required to be paid by an employee of the Southern Railway in a position such as yours under the Union shop agreement, moneys required to be paid to the union under that agreement, would be used in part to support legislation or candidates, certain legislation and certain candidates, and to oppose other legislation and other candidates, what is your position with respect to such use of your money?"

"A. I would be absolutely against that, because I think I have sense enough to choose the candidate I would like to support myself, and then on the other hand, I think a man has a right to choose what legislation he believes in and wants to support and any candidate he believes in and wants to support".

Rebecca Scholl (R. 340): — "I would like to feel that I could support the candidates whom I wanted to; if I gave any money to the campaign, I would like to have it on the candidate whom I support and not from someone else selecting".

Elizabeth Brown (R. 48): —"If the evidence should establish or tend to establish a part of the money collected by the union is used to oppose and seek to repeal the right-to-work laws, I am opposed to such use of my money, because I am for the right-to-work laws. If the evidence should establish or tend to establish that part of the money collected by unions would be used to maintain the Federal law which makes possible Union shop

agreements and that part of the money would be used to maintain that law in effect, I would be opposed to it."

R. P. Powell (R. 37): — "I would not be agreeable to having my money taken from me in any amount and used by the union to accomplish the wiping out of the right-to-work law".

Mary B. Crosby (R. 33): — "Q. If the evidence should show that the money which you might be compelled to pay to the union would be used in part to influence the passage of laws, or to defeat the passage of legislation, or to influence the election of certain candidates and defeat the election of other candidates, what is your position with respect to such uses of your money?"

"A. I am opposed to it. I am opposed to use of my money to influence the passage of laws or effect the election of candidates, because I think that as individuals we should have the right to make our own decisions about such matters".

Yet in the face of all such declaration of dissent and protest, the defendant unions assert in their Petition to this Court (p. 14) that each of the plaintiffs "is to be regarded as a voluntary or acquiescing dues payer"!

II. The Judgment Rendered In The Court Below Is Equitable And Appropriate And Is Free Of The Errors Which This Court Found In The *Street* Judgment

It having been adjudicated, in harmony with this Court's ruling in *Street*, that unless protected by Court order, the plaintiffs will be subjected to an unlawful compulsion, that is, the taking and use of their money for

political purposes against their will, the question is — what Court action is appropriate to protect them?

It is submitted that a fair and reasonable answer is to be found simply in following the basic line of distinction which this Court has laid down. The Court has said that all employees covered by the union shop contract must contribute to the "costs 'in the realm of collective bargaining' ", but that objecting employees cannot be made to contribute to political purposes.

The common sense solution of the matter is, therefore, to use the line which this Court has drawn to separate the dissenting employees' dues money, so that the portion which will be used for "defraying the costs of collective bargaining", and which the plaintiffs can lawfully be compelled to contribute, will be on one side of the line — and the portion which will be used for political purposes, and which the plaintiffs cannot lawfully be compelled to contribute, will be on the other side of the line. Only the latter portion would the unions be barred from collecting.

The unions would thus remain completely free to collect whatever amounts the union shop agreement might authorize from all voluntary members and whatever amounts might be "necessary or reasonably related" to collective bargaining from all members, voluntary and dissenting alike. Likewise, the unions would then be completely free to spend any and all of the moneys received by them from all sources for any and all purposes whatsoever[1].

The separating of the two portions, in the case of dissenting employees, should, of course, in the first instance be done by the defendant unions. For they are the only

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[1]Unless, of course, restricted by some law, such as the Federal Corrupt Practices Act, not pertinent here.

persons or parties involved who know, or have the facts and information enabling them to know, what portion of the dues money is used to defray the "costs of collective bargaining" and what portion is used for political purposes. They, and they alone, know what *they* do with the money.

As this court, in an opinion by Mr. Justice Brennan, has well expressed it:

> ". . . (T)he ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary. *United States vs. New York, N. H. and H. R. Co.*, 355 U. S. 253, 256, note 5; 2 L Ed 2d 247, 250; 78 S. Ct. 212".
>
> *Campbell vs. United States*, 365, U. S. 85, 96.

Such, also, is the view of the North Carolina Courts:

> "It is a rule of practically universal acceptance that where a particular fact, necessary to be proved, rests peculiarly within the knowledge of a party, upon him the law casts the burden of proving such fact".
>
> . . .
>
> "The rule as to the burden of proof is important and indispensable in the administration of justice. It constitutes a substantial right of the party upon whose adversary the burden rests; and therefore, it should be carefully guarded and rigidly enforced by the courts".
>
> *Skyland Hosiery Co. vs. American Railway Express Co.*, 184 N. C. 478, 480; 114 S. E. 823
>
> *Anthony vs. American Express Co.*, 188 N. C. 407, 410; 124 S. E. 753

In *United States vs. CIO*, 335 U. S. 106, a case involving union publications for political purposes, the separating of the dissenting employee's union dues into two portions, one of which he would be required to pay and the other of which he would be relieved from paying, was suggested:

> "If . . . 'minority or dissenter protection' were intended, it would be sufficient for securing this to permit the dissenting members to carry the burden of making known their position *and to relieve them of any duty to pay dues or portions of them to be applied to the forbidden uses,* without jeopardy to their rights as members. This would be clearly sufficient, it would seem, to protect dissenting members against use of funds contributed by them for purposes they disapprove, but would not deprive the union of the right to use the funds of concurring members . . ." (emphasis supplied)
>
> *United States vs. CIO*, 335 U. S. 106, 149 (Concurring opinion of Rutledge, J., with whom Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy joined)

It is also significant to note that in the brief filed by the United States in the *Street* case, it was agreed (p. 46) that:

> ". . . (I)t may be appropriate to reduce the obligations of the dissenting members in proportion to the percentage of the union's total expenditures which are used for the forbidden purposes. Such questions need not be resolved at this time, however, for no relief of this kind was requested by the appellees or granted by the Courts below".

In the present case, however, this *is* the relief which was requested by the plaintiffs, and this *is* the relief which was granted by the Courts below[1].

Several years before this Court came to this problem in the *Street* case, the Trial Court in the present case foresaw the difficulties which might arise on this matter and undertook to frame a judgment which would deal fairly with the interests of all concerned. The plaintiffs believe that this judgment will now recommend itself to this Court as reasonable and proper upon the facts of this case — and as one which avoids the features that this Court found objectionable in the *Street* case.

It will be remembered that in the *Street* case Mr. Justice Brennan, speaking for himself, Chief Justice Warren, Mr. Justice Clark and Mr. Justice Stewart, considered, as did Mr. Justice Douglas and Mr. Justice Black, that the judgment which had been rendered by the lower Court in the *Street* case was too broad, in that it ran "not only in favor of six protesting employees but also in favor of the 'class they represent' ". All six of these Justices agreed that relief should be confined to the individual plaintiffs. In the present case, by contrast, all element of "class action" was rigorously eliminated by the Trial Court. The judgment now before the Court does not purport to operate in behalf of any one except the individuals who are actual plaintiffs in the case.

The Court will also recall that in the *Street* case, the lower Courts had "perpetually enjoined" the unions and

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[1]In Great Britain, such relief is apparently provided and required by Statute. Trade Union Act of 1913, 2 and 3 Geo. V, c. 30. Under this legislation the dissenting union member can "contract out" from any duty to make any payments toward the cost of the union's political activities.

the Railway Companies "from enforcing the said union shop agreements", and had provided only that the defendants might petition for dissolution of such injunction upon a showing that they had ceased "engaging in the improper and unlawful activities" which had been found.

Mr. Justice Brennan, for himself, Chief Justice Warren, Mr. Justice Clark and Mr. Justice Stewart, expressed the view that:

"*Restraining the collection of all funds* from the appellees sweeps too broadly . . ."

"Even though the lower Court decree is subject to modification upon proof by the appellants of cessation of improper expenditures, in the interim the prohibition is *absolute against the collection of all funds*. . . . The *comp'ete shutoff* of this source of income defeats the congressional plan to have all employees benefited share costs 'in the realm of collective bargaining' . . ."

"We also think that a *blanket injunction* against *all expenditures* of funds for the disputed purposes, even one conditioned on cessation of improper expenditures, would not be a proper exercise of equitable discretion". (emphasis supplied)

The four Justices joining in the main opinion therefore voted to remand the case to the Georgia Courts for the framing of a judgment "not inconsistent" with their opinion.

Mr. Justice Douglas, without whom the four Justices joining in the main opinion would not have constituted a majority, was reluctant to take this course, but said ". . . there is the practical problem of mustering five Jus-

tices for a judgment in this case. So I have concluded *dubitante* to agree to the one suggested by Mr. Justice Brennan . . ."

It is thus apparent that the Court was casting about for a remedy which would not be illusory to the protesting employees nor too restrictive upon the unions — a judgment which would effectively protect the dissenting employees' liberties but also leave the unions free to function as bargaining agents for all employees.

It is submitted that the judgment rendered in the present case accomplishes just such an accommodation of these conflicting interests. For here, there is no injunction "restraining the collection of all funds" from the plaintiff employees. There is no prohibition "absolute against the collection of all funds" from the plaintiffs. There is no "complete shutoff of union income from the plaintiffs". And there is no "blanket injunction against all expenditures of funds for the disputed purposes" — nor, indeed, any injunction against any expenditures of any sort by the unions.

The defendant unions declare (petitioners' brief pp. 21-22) that the judgment rendered in this case is "an injunction against the enforcement of the union shop agreement" and that by its terms the unions are prohibited from "collecting anything from the respondents under the union-shop agreement". This is not true. The judgment specifically provides that upon the unions' designating and separating, to one side of the very line of demarcation which this Court has since drawn in the *Street* case, that portion of the dues money which will be used to defray "the costs of collective bargaining"—"this Order shall have no application or force or effect with respect to such portion of such periodic dues, initiation fees or assessments or the

imposition and collection thereof under the terms of the contract referred to in the pleadings".

This Court has, of course, no solicitude or concern for the union-shop agreement, insofar as it operates, as this Court itself holds, unlawfully — that is, insofar as it accomplishes the taking and using of employees' money for political purposes against their will. The concern which this Court expresses is that in thwarting this unlawful operation of the union-shop agreement, there shall be no interference with the full operation of the agreement in all its other lawful areas and functions.

This is exactly the adaptation which the present judgment makes. It touches and inhibits the union shop agreement only in its process of accomplishing the unlawful. It leaves the union shop agreement untouched and completely free to operate in all other respects[1].

This also is to be remembered — that since, as this Court holds, the Federal Statute does not authorize or protect the exaction of money from employees for political purposes against their will, such exaction, in the case of these North Carolina plaintiffs, automatically becomes subject

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[1]The judgment also restrains the defendant unions from compelling the plaintiffs "to join" or "conform to the rules or disciplines" of the unions. It does not appear, however, that the unions make any point of this, and indeed it seems to have been conceded on all sides, both in this case and in the *Street* case, that neither the Railway Labor Act as amended, nor the union shop agreement executed thereunder, purport to authorize any compulsion upon employees save only with respect to the payment of "periodic dues, initiation fees and assessments". The defendant unions in their brief (pp. 5-7) before the Supreme Court of North Carolina, declared this to be so. Thus there is no dispute as to the enjoining of non-monetary compulsions — all such compulsions being prohibited by the North Carolina Statute and not even claimed to be authorized by the Federal Statute.

to the express interdiction of North Carolina law. In other words, as this Court declares the exaction to be not sanctioned or protected by the 1951 Amendment to the Railway Labor Act, it immediately falls beneath the thrust of the North Carolina "right-to-work" statute. This Federally-unprotected exaction — and this only — is what the North Carolina Court has enjoined.

The argument of the defendant unions seems to assume that, although ruling the forced exaction of employees' money for political purposes to be unlawful, this Court is somehow still solicitous in behalf of the unlawful process. In this, the defendants seem to suggest that the *Street* decision is basically self-contradictory, moving in opposite directions at the same time — a sort of juridical Janus.

The defendants apparently would have the Court say to the plaintiffs: — "We hold this compulsory exaction of money from you for political purposes to be unlawful. *Nevertheless, you must submit to it.* Perhaps, some day, somehow, through arduous effort and protracted litigation and the expenditure of a thousand times the amount involved, you may restrain the expenditure of some part of what you must now fully pay, or possibly obtain restitution for the unlawful compulsion which you must now accept".

And how often would the dissenting employee have to bring suit to achieve these remote and pitiful results? Each action would adjudicate nothing save the disposition of the money involved in that case — leaving the employee completely unprotected against successive and unending repetitions of the same unlawful compulsion, so that as long as he remained an employee, he could maintain the right which the Court has declared to be his, only by ceaseless, renewed and perpetual litigation.

Would all this be consistent with any principle of the avoidance of multiplicity of suits? Would it comport with

equity — or fairness — or common sense? Above all, would it not be a solemn and cynical mockery of the fundamental liberty and freedom of choice for which these plaintiffs are struggling?

These plaintiffs pray that the Court will not, at the defendants' behest, render a decree which would be to the plaintiffs but a giving with one hand and a taking away with the other — transforming the right which this Court has declared to be theirs into an illusion — a mirage — a faith "pledged to the ear and broken to the heart"!

As this Court has itself said, the issues underlying this field of controversy are "of the utmost gravity". Vital principles are at stake — not only vital to individual freedom but equally crucial to the integrity of Government. For if arrangements are now established under which American citizens, in order to work, will be compelled to pay money to collective representatives, which these representatives then use to elect whom they will to public office and to enact what they wish into law — then both individual liberty and free government are indeed on the road to extinction in our land.

And it, of course, avails naught that this is declared to be unlawful — *if for lack of practical and meaningful remedy, the oppression is still accomplished.*

CONCLUSION

The plaintiffs earnestly urge upon the Court that the remedy which has been granted them is necessary and reasonable and appropriate, and that the judgment rendered below should be affirmed.

Respectfully submitted,

WHITEFORD S. BLAKENEY

Attorney for the Plaintiff-Respondents

APPENDIX

Plaintiffs' Exhibits Received In Evidence — As Listed And Described In Original Record

1. Agreement dated February 27, 1953 (Orig. Rec. 282 and 283-296; also printed in U. S. Supreme Court reprint of record 160-170) and copy of P. L. 914, 81st Congress (1951 Amendment to Federal Railway Labor Act, 64 Stat. 1238, 45 USC 152 Eleventh — Orig. Rec. 297-299).

2. Constitution of Grand Lodge, Brotherhood of Clerks (Orig. Rec. 282).

This exhibit — the Constitution of the Grand Lodge — Statutes for the Government of Lodges and Protective Laws of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees — consisted of a printed pamphlet 167 pages long. Since it is not practicable to reproduce it in the record proper, the appellants are filing nine copies of the same with the Clerk of the Supreme Court in accordance with Rule 19 (Orig. Rec. 299).

3. 3a-3aj, copies of pages from the newspaper "Labor" (Orig. Rec. 283).

Exhibits 3a-3aj consisted of photostatic copies of pages from various editions of a newspaper known as "Labor". (There appear to be no exhibits 3ah and 3ai — possibly due to an error in numbering on the part of the reporter). Since it is not practicable to reproduce these exhibits in the printed record, the appellants are filing with the Clerk of the Supreme Court nine copies of each of them, in accordance with Rule 19 (Orig. Rec. 300).

4. Clipping from "Labor", for October 27, 1956 (Orig. Rec. 283).

5. Clipping from "Labor", for October 6, 1956 (Orig. Rec. 283).

6. Clipping from "Labor", for October 20, 1956 (Orig. Rec. 283).

Plantiffs' exhibits Nos. 4, 5 and 6 consisted of substantial clippings from various editions of the above mentioned newspaper known as "Labor". Since it is not practicable to reproduce these exhibits in the printed record, the appellants are filing with the Clerk of the Supreme Court nine copies of each of them, in accordance with Rule 19 (Orig. Rec. 300).

7. "Brotherhood of Railway Clerks Bulletin", for October, 1956 (Orig. Rec. 283).

This exhibit consisted of an issue of a magazine known as "Brotherhood of Railway Clerks Bulletin" for October 1956, which is approximately 30 pages long and includes various photographs, etc. Since it is not practicable to reproduce this exhibit in the printed record, the appellants are filing with the Clerk of the Supreme Court nine copies of this exhibit, in accordance with Rule 19 (Orig. Rec. 300).

8. "The Railway Clerk", for May 1, 1956 (Orig. Rec. 283).

9. "The Railway Clerk", for May 15, 1956 (Orig. Rec. 283).

10. "The Railway Clerk", for October 15, 1956 (Orig. Rec. 283).

'Plaintiffs' exhibits Nos. 8, 9 and 10 consisted of issues of a magazine known as "The Railway Clerk" dated May 1, 1956, May 15, 1956 and October 15, 1956. These magazines each contain a substantial number of pages together with numerous photographs, charts and diagrams, etc. Since it is not practicable to reproduce these exhibits in the printed record, the appellants are filing with the Clerk of the Supreme Court nine copies of this exhibit, in accordance with Rule 19 (Orig. Rec. 300-301).

11. Letter, dated August 21, 1957, from North Carolina State Legislative Committee, Brotherhood of Clerks, to Secretary of State of N. C. (Orig. Rec. 283 and 301-302; also printed in U. S. Supreme Court reprint of record 170-171).

12. "Legislative Facts, 1957" (Orig. Rec. 283).

This exhibit consisted of a printed pamphlet entitled "Legislative Facts 1957", and subtitled "A Handbook of Legislative Information Published as a Supplement to the June 1951 Bulletin, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees". It contains approximately 36 pages of printed matter, charts and diagrams, and it is not practicable to reproduce it in the printed record. No additional copies of the same are available to the appellants, and by reason of the nature of the exhibit, it is not practicable to have a sufficient number of copies of the same reproduced, by any available means. Therefore, the appellants are filing with the Clerk of the Supreme Court the original of Plaintiffs' Exhibit No. 12, together with a motion directed to

the Supreme Court requesting that this exhibit be accepted in lieu of formal compliance with the regular rules of the Court for exhibits, under the circumstances (Orig. Rec. 302-303).

13. "Report of the AFL-CIO Executive Council, 1957" (Orig. Rec. 283)

This exhibit consisted of a printed book approximately 408 pages long, exclusive of the cover, entitled "Report of the AFL-CIO Executive Council, 1957, Second Convention". No additional copies of this exhibit are available to the appellants and, by reason of the size and nature of this exhibit, it is not practicable for the appellants to have the same reproduced by any available means. Therefore, the appellants are filing the original Plaintiffs' Exhibit No. 13 with the Clerk of the Supreme Court together with a motion addressed to the Court requesting that the appellants be relieved of formal compliance with the rules of the Court regarding exhibits, under the circumstances (Orig. Rec. 303).

14. Letter on R. L. P. L. letterhead, 401 Third Street, N. W., January 1, 1957 — C 4127 (Orig. Rec. 303).

(This exhibit reprinted in present Appendix to respondents' brief).

15. Excerpts from Report of Committee on Political Education to Clerk of U. S. House of Representatives (Orig. Rec. 316).

(This exhibit reprinted in present Appendix to respondents' brief).

16. Letter from Brotherhood of Railway Clerks, Lodge No. 473, to L. J. Byrum, dated April 1, 1957 (Orig. Rec. 332-335).

17. Excerpts from proceedings of the 20th Regular and Sixth Quadrennial Convention of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (Orig. Rec. 335-337; also printed in U. S. Supreme Court reprint of record 172-173).

18. The signalman's Journal, for August, 1956 (Orig. Rec. 337).

This exhibit consisted of an issue of a magazine called The Signalman's Journal for August, 1956. The original exhibit consisted of more than 30 pages, including numerous photographs, diagrams, etc. No additional copies of this magazine are available to the appellants and it is not practicable to reproduce the whole magazine by any available means. Therefore, the appellants have reproduced and are filing with the Clerk of the Supreme Court nine copies of the cover page, page 225, which is the Table of Contents, and pages 238 and 239, the latter two pages being the two pages which were read to the jury by the plaintiffs' counsel and the Table of Contents being the page which was read to the jury by the Union defendants' counsel (Orig. Rec. 337).

19. Constitution of the Brotherhood of Railway Signalmen of America (Orig. Rec. 337).

This exhibit consisted of a mimeographed copy of the Constitution of the Brotherhood of Railway Signalmen of America (as revised at the 30th Regular Convention, 1950). It is approximately 160 pages long and so it is not

practicable for it to be included in the printed record. Therefore, the appellants are filing with the Clerk of the Supreme Court nine copies of the same, in accordance with Rule 19 (Orig. Rec. 337).

20. "Special and Final Notice — Signal Employees Subject to the Provisions of the Union Shop Agreement of 1953" (Orig. Rec. 337-341; also printed in U. S. Supreme Court reprint of record 173-176).

21. "Application for Reinstatement in the Brotherhood of Railroad Signalmen of America" (Orig. Rec. 341-345).

PLAINTIFFS' EXHIBIT NO. 14 (Orig. Rec. 303-309)

January 1, 1957
C 4127

Letter on R. L. P. L. letterhead, 401 Third St., N. W.

A. E. Lyon, Chrm.

G. E. Leighty, V. Chr.

C. T. Anderson, S. Treas.

addressed to Hon. Ralph R. Roberts, Clerk, U. S. H. of R.:

"As required in the provisions of the Federal Corrupt Practices Act, as amended, I herewith submit the information containing the activities of Railway Labor's Political League. To the best of my knowledge, this is a true and accurate report of these receipts and expenditures.

(1)	C. T. Anderson, 401 3rd St NW Wash DC 6-15-56	100.00
	Max Lowenthal, New Milford, Conn 7-5-56	2,500.00
	A. E. Lyon, 401 3rd St NW Wash DC 8-15-56	100.00
	Edward Keating, 4625 Charleston Terrace, Wash DC, 9-26-56	100.00
	Horace W. Harper, 844 Rush St Chicago, Ill, 10-2-56	100.00
	Jesse Clark, 503 Wellington Ave Chicago, Ill, 10-8-56	100.00
	C. L. Bromley, 503 Wellington Ave Chicago, Ill, 10-8-56	100.00
	Edward J. Hickey, Tower Bldg. Wash DC, 10-9-56	500.00
	Harry See, 401 3rd St NW Wash DC, 10-2-56	100.00

	Lester P. Shoene, 1625 K St NW Wash DC, 10-29-56		1,000.00
	E. H. Benson, 401 3rd St NW Wash DC, 10-29-56		100.00
	A. E. Lyon, 401 3rd St NW Wash DC, 10-29-56		100.00
(2)	$97,626.77		
(3)	Total sum of contributions received in 1956		$102,526.77
(4)	1-31-56	Harley O. Staggers, Keyser, W Va	1,000.00
	3-17-56	Robert Michel, Perkin, Ill	300.00
	3-27-56	Staggers for Congress, Keyser, W Va	1,000.00
	4- 9-56	Cecil Callison, Treas. Magnuson Campaign Comm	2,000.00
	4-10-56	H. E. Wolf, Treas. Smathers Campaign Comm	350.00
	4-17-56	Democratic National Comm Wash DC	5,000.00
	4-17-56	Woodrow Wilson Dinner Comm Wash DC	2,000.00
	4-25-56	James C. Murray Campaign Comm, Chicago Ill	500.00
	4-25-56	Barrett O'Hara, Chicago Ill	500.00
	4-25-56	Citizens Comm for Peter F. Mack, Carlinville, Ill	500.00
	5-14-56	Kentucky Campaign, K. Birkhead, Wash DC	1,000.00
	5-25-56	COPE, Wash DC	99.00
	6-11-56	Calif Railway Labor Citizens League	500.00
	6-12-56	W. J. Burton, Jr. Spencer NC	325.00
	7- 2-56	Gene Wyatt, Pulaski, Tenn	500.00
	7- 2-56	Lenoir Sullivan, St Louis, Mo	500.00

7- 2-56	E. L. Skipper, Box 5 Hamlet, NC	83.45
7- 2-56	John B. Bennett, Ontonagon Mich	500.00
7- 2-56	Hayworth Campaign for Congress, E Lansing Mich	500.00
7- 2-56	Charles Hurley, Hancock City, Muskie Campaign Mgr	1,000.00
7- 5-56	Torbert Macdonald for Congress, Malden, Mass	500.00
7- 5-56	John V. Beamer, Wabash, Ind	500.00
7- 5-56	Frank M. Clark, Bessemer, Pa	500.00
7-10-56	Union County Dem Comm Westfield, N J	500.00
7-10-56	John B. Bennett, Ontonagon, Mich	500.00
7-10-56	Reelect Sen Morse Comm Wash DC	1,000.00
7-13-56	Leslie Biffle, Treas Dem Senatorial Camp Comm	2,000.00
7-16-56	Dem Senatorial Camp Comm Wash DC	2,000.00
7-24-56	Johnson for Congress, Black River Falls, Wis	500.00
7-30-56	Gene Wyatt, Pulaski, Tenn	500.00
8-21-56	Don Magnuson Finance Comm Seattle, Wash	500.00
8-21-56	Burnside for Congress Comm Huntington, W Va	500.00
8-24-56	Wayne Morse Camp Comm Wash DC	5,000.00
9- 5-56	Stengel for Senator Comm Chicago, Ill	5,000.00
9- 5-56	Foley for Congress Comm Kensington, Md	500.00
9-13-56	Alonzo Young, for Maine Campg	500.00
9-13-56	Macdonald for Congress Comm Malden, Mass	500.00
9-13-56	Frank M. Karsten, St Louis, Mo	500.00

9-18-56	Cleveland M. Bailey, Clarksburg, W Va	500.00
9-21-56	Dodd for Senator Comm Hartford, Conn	2,000.00
9-21-56	Gracie Pfost Campaign Comm Nanipa, Idaho	500.00
9-21-56	Henry S. Renss, Milwaukee Wis	500.00
9-21-56	Hull for Congress Club, Platte City, Mo	500.00
9-21-56	Winfield K. Denton, Evansville, Ind	500.00
9-21-56	Christopher for Congress Comm, Nevada, Mo	500.00
9-21-56	E. E. Amour, St Alvans, Vt	500.00
9-21-56	McCarthy for Congress Comm St Paul, Minn	500.00
9-24-56	Weber County Dem Comm Ogden, Utah	500.00
9-25-56	Oregon Dem Cent Comm Portland, Ore	2,000.00
9-25-56	Morse Campaign, Portland, Ore	1,000.00
9-25-56	Wm E Doyle, Denver, Colo	1,000.00
9-25-56	Moss for Congress Comm Sacramento, Calif	500.00
9-25-56	Robert J. Harris, Cincinnati, Ohio	500.00
9-25-56	John A. Blatnik, Duluth, Minn	500.00
9-26-56	Citizens for Frank Church, Boise, Idaho	1,000.00
9-27-56	Ray W. Weir, Minneapolis, Minn	500.00
10- 3-56	Imle for Congress Comm Mt Vernon, Ill	500.00
10- 4-56	John B. Bennett, Ontonagon, Mich	500.00
10- 4-56	Martha Griffiths Campaign Comm. Detroit, Mich	500.00

10- 9-56	Spillers Camp Comm Wheeling, W Va	500.00
10- 9-56	Whitehead for Congress Comm Radford, Va	500.00
10- 9-56	LeRoy Anderson Camp Comm Shelby, Mont	500.00
10- 9-56	Union County Dem Comm N J	500.00
10- 9-56	Roger Fox, Ft Dodge, Iowa	500.00
10- 9-56	Moulder for Congress, Columbia, Mo	500.00
10- 9-56	Peter W. Rodino, Newark N J	500.00
10- 9-56	Burnside for Cong Comm Huntington, W Va	500.00
10- 9-56	Leonard D. Slutz Camp fund Cincinnati, Ohio	500.00
10- 9-56	James T. Devan Camp fund Cincinnati, Ohio	500.00
10- 9-56	Clyde E. Milligan, Kansas City, Kan	200.00
10- 9-56	Agnes Geelan, Enderlin, N D	500.00
10- 9-56	Calif Ry Labor Citizens League, Monterey Pk. Calif	500.00
10- 9-56	Harry Kampelman, Passaic NJ	500.00
10- 9-56	Harry Lerner, Newark NJ	500.00
10-10-56	Magnuson Campaign Comm Seattle	2,000.00
10-10-56	John A. Mapp, Bristol, Va	500.00
10-15-56	Stengel For Senator, Chicago, Ill	1,000.00
10-16-56	Betty Hill, Pittsburg Pa	500.00
10-17-56	Frank M. Karsten St Louis, Mo	500.00
10-17-56	Heyworth for Congress, Lansing, Mich	500.00
10-17-56	Fridel for Congress, Baltimore, Md	500.00
10-18-56	Stevenson-Kefauver Dinner Comm. Wash DC	9,000.00
10-18-56	Jackson J. Holtz, Cong Camp Comm, Boston, Mass	500.00

10-18-56	George McMahon, Roanoke, Va	187.37
10-23-56	Rhodes for Cong Comm Reading, Pa	500.00
10-29-56	Moreland Camp Comm Okla City, Okla	500.00
10-30-56	Geo. E. McMahon, Roanoke, Va	187.37
10-30-56	Mahoney Camp Comm Baltimore, Md	2,000.00
10-30-56	Dodd for Senator Comm W Hartford, Conn	2,000.00
10-30-56	Wm. E. Doyle, Denver, Colo	2,000.00
10-30-56	Evans Camp Comm. Arnolds Park, Iowa	1,000.00
10-31-56	RLPL Educational Fund—transfer of operating exp	3,628.12
11- 1-56	Wm Powers, Providence, R I	1,500.00
11- 1-56	Jackson Holtz, Cong Camp Comm Boston, Mass	500.00
11- 1-56	Citizens Comm for Peter F. Mack, Springfield, Ill	500.00
11- 1-56	Imle for Cong Comm Mt Vernon, Ill	250.00
11- 1-56	J. K. Dear, Dem Chrm 2nd Dist Kansas City, Mo	200.00
11- 2-56	Camp Comm for Robert Giano, New Haven, Conn	500.00
11- 2-56	Camp Comm for Harris B. McDowell, Middleton, Del	500.00
11- 2-56	Wm. F. Denman, Camp Comm Des Moines, Iowa	500.00
11- 2-56	Camp Comm for John W. King, Greencastle, Ind	500.00
11- 2-56	Camp Comm for Hamilton Fox, Salisbury, Md	500.00
11- 2-56	Camp Comm for Geo. G. Lindsay, Tremont, Pa	500.00
11- 2-56	Camp Comm for James G. Polk, Highland, O	500.00
11- 2-56	Camp Comm for Thomas L. Ashley, Waterville, O	500.00

11- 2-56	Camp. Comm. for Al Ullman, Baker, Ore	500.00
11- 2-56	Camp. Comm. for Wm. Mahoney, Phoenix, Ariz	500.00
11- 2-56	Camp. Comm. for Cecil R. King, Inglewood, Calif	500.00
11- 2-56	Camp. Comm. for Chet Hollifield, Montebello, Calif	500.00
11- 2-56	Camp. Comm. for Clyde Doyle, South Gate, Calif	500.00
11- 2-56	Camp. Comm. for James Roosevelt, Los Angeles Calif	500.00
11-14-56	George E. McMahon, Roanoke, Va.	359.30
11-21-56	Melvin E. Price, E St Louis, Ill	500.00
11-21-56	King County Cem Central Comm. Seattle, Wash	2,000.00

All contributions were made for purposes of general activity.

(5)	Expenditures not listed unded Paragraph (4)	$ 2,800.00
(6)	Total Expenditures made during 1956	$104,469.60

PLAINTIFFS' EXHIBIT NO. 14—Continued

Report of Railway Labor Political League to Secretary of U. S. House of Representatives, dated January 1, 1957 (Orig. Rec. 310-316):

Date	*Name of Payee*	*Purpose*	*Amount*
1-22-57	Morse Deficit Committee		$2 000
2-28-57	Robert Bryant	Contribution for general activity	2 000
3-18-57	Jack Beatty, Treasurer	Contribution for general activity	750
3-14-57	Robert Bryant	Contribution for general activity	2 000
8-20-57	Proxmire for U.S. Senate Committee	Contribution for general activity	1 000
10-29-56	Moreland Campaign Fund		500
10-30-56	George E. McMahon	Contribution for general expenses while campaigning in Virginia	187 37
10-30-56	Mahoney Campaign		2 000
10-30-56	Dodd for Senate Committee		2 000
10-30-56	Wm. E. Doyle	Contribution for general activity	2 000
10-30-56	Evans Campaign Committee		1 000
10-31-56	Transfer of Funds to Railway Labors' Political League Education Fund		3 628 12
1-31-56	Harley O. Staggers	Contribution for general activity	1 000

Date	*Name of Payee*	*Purpose*	*Amount*
3-17-56	Robert Michel	Contribution for general activity	300
3-27-56	Staggers for Congress Committee		1 000
4- 9-56	Magnuson Campaign Committee		$2 000 00
4-10-56	Smathers Campaign Committee		350 00
4-17-56	Democratic Nat'l. Committee		5 000 00
4-17-56	Woodrow Wilson Dinner Committee		2 000 00
4-25-56	James C. Murray Campaign Committee		500 00
4-25-56	Barratt O'Hara	Contribution for general activity	500 00
4-25-56	Citizens Committee for P. F. Mack		500 00
5-14-56	Kentucky Campaign K. Birkhead		1 000 00
5-25-56	COPE	Contribution for general activity	99 00
6-11-56	California Rwy. Labors Citizens League		500 00
6-12-56	W. J. Burton	Contribution for general activity	325 00
7- 2-56	Gene Wyatt	Contribution for general activity in 6th Cong. District	500 00
7- 2-56	Leonor Sullivan	Contribution for general activity	500 00
7- 2-56	E. L. Skipper	Expenses	83 45
7- 2-56	John B. Bennett	Contribution for general activity	500 00
7- 2-56	Hayworth Campaign for Congress		500 00

Date	*Name of Payee*	*Purpose*	*Amount*
7- 5-56	Charles Hurley	Contribution for general activity	1 000 00
7- 5-56	Joseph Craken	Contribution for general activity	500 00
7- 5-56	John W. Beemer	Contribution for general activity	500 00
7- 5-56	Frank M. Clark	Contribution for general activity	$ 500 00
7-10-56	Union County Democratic Committee		500 00
7-10-56	John B. Bennett	Contribution for general activity	500 00
7-10-56	Re-elect Senator Morse Committee		1 000 00
7-13-56	Leslie Biffle, Treas. Democratic Senatorial Campaign Committee		2 000 00
7-15-56	Democratic Senatorial Campaign Committee		2 000 00
7-24-56	9th Dist. Johnson for Congress Club		500 00
7-30-56	Gene Wyatt	Contribution for general activity	500 00
8-21-56	Don Magnuson Finance Committee		500 00
8-21-56	Burnside for Congress Committee		500 00
8-24-56	William Morse Campaign Committee		5 000 00
9- 5-56	Stengel for Senate Committee		5 000 00
9- 5-56	Foley for Congress Committee		500 00

Date	*Name of Payee*	*Purpose*	*Amount*
9-13-56	Alonzo Young for Maine Campaign		500 00
9-13-56	Joseph Craken—Macdonald for Congress Committee		500 00
9-13-56	Frank M. Karsten	Contribution for general activity	500 00
9-18-56	Cleveland M. Bailey	Contribution for general activity	500 00
9-21-56	Dodd for Senate Committee		2 000 00
9-21-56	Pfost Campaign Committee	Contribution for general activity	$ 500 00
9-21-56	H. S. Reuss		500 00
9-21-56	Hull for Congress Club		500 00
9-21-56	Winfield K. Kenton	Contribution for general activity	500 00
9-21-56	Christopher for Congress Club	Contribution for general activity	500 00
9-21-56	C. E. St. Amour		500 00
9-21-56	McCarthy for Congress Volunteer Committee		500 00
9-24-56	Weber County Democratic Central Committee		500 00
9-25-56	Oregon Democratic Central Committee		2 000 00
9-25-56	Morse Campaign Committee		1 000 00
9-25-56	William E. Doyle		1 000 00
9-25-56	Moss for Congress Campaign Committee		500 00
9-25-56	Robert J. Harris		500 00
9-25-56	John A. Blatuik		500 00

Date	*Name of Payee*	*Purpose*	*Amount*
9-26-56	Citizens for Frank Church		1 000 00
9-27-56	Roy W. Wier		500 00
10- 3-56	Imle for Congress Campaign Committee		500 00
10- 4-56	John B. Bennett	Contribution for general activity	500 00
10- 4-56	Martha Griffith's Campaign Committee		500 00
10- 9-56	Spillers Campaign Committee		500 00
10- 9-56	Whitehead for Congress Committee		500 00
10- 9-56	LeRoy Anderson for Congress Committee		500 00
10- 9-56	Union County Democratic Committee		500 00
10- 9-56	Roger Fox		$ 500 00
10- 9-56	Moulder for Congress Club		500 00
10- 9-56	Peter W. Rodino		500 00
10- 9-56	Burnside for Congress Committee		500 00
10- 9-56	L. D. Slutz Campaign Fund		500 00
10- 9-56	J. T. Dewan Campaign Fund		500 00
10- 9-56	Clyde E. Milligan, Treas., 2nd Cong. Dist of Kansas	Contribution for general activity	200 00
10- 9-56	Agnes Geelan	Contribution for general activity	500 00
10- 9-56	California Railway Labors Citizens' League		500 00

Date	*Name of Payee*	*Purpose*	*Amount*
10- 9-56	New Jersey State Democratic Committee		500 00
10- 9-56	Harry Lerner	Contribution for general activity	500 00
10-10-56	Magnuson Campaign Committee		2 000 00
10-10-56	Pat Jennings Campaign Committee		500 00
10-15-56	Stengel for Senate Committee		1 000 00
10-16-56	Betty Hill	Contribution for general activity 28 Dist.	500 00
10-17-56	Frank M. Karsten	Contribution for general activity	500 00
10-17-56	Hayworth Campaign for Congress		500 00
10-17-56	Friedel for Congress		500 00
10-18-56	Stevenson-Kefauver Dinner Committee		9 000 00
10-18-56	Jackson J. Holtz Congress Campaign Committee		500 00
10-18-56	George G. McMahon	Campaign expenses in Virginia	$ 187 36
10-23-56	Rhodes for Congress Committee		500 00
11- 1-56	William Powers		1 500 00
11- 1-56	Holz Congress Committee		500 00
11- 1-56	Citizens Committee for P. F. Mack		500 00
11- 1-56	Imle for Congress Committee		250 00
11- 1-56	J. K. Dear, Dem. Chmn., 2nd Dist.		200 00
11- 2-56	Campaign Committee for Robert Geasino		500 00

Date	*Name of Payee*	*Purpose*	*Amount*
11- 2-56	Campaign Committee for H. P. McDowell		500 00
11- 2-56	Campaign Committee for Wm. F. Denman		500 00
11- 2-56	Campaign Committee for John W. King		500 00
11- 2-56	Campaign Committee for Hamilton Fox		500 00
11- 2-56	Campaign Committee for George G. Lindsay		500 00
11- 2-56	Campaign Committee for James G. Polk		500 00
11- 2-56	Campaign Committee for Thomas L. Ashley		500 00
11- 2-56	Campaign Committee for Al Ullman		500 00
11- 2-56	Campaign Committee for Wm. P. Mahoney		500 00
11- 2-56	Campaign Committee for Cecil R. King		500 00
11- 2-56	Campaign Committee for Chet Halifield		500 00
11- 2-56	Campaign Committee for Clyde Doyle		500 00
11- 2-56	Campaign Committee for James Roosevelt		500 00
11-14-56	George E. McMahon		359 30
11-21-56	Melvin Price		500 00
11-21-56	King County Democratic Central Committee		$2 000 00

PLAINTIFFS' EXHIBIT NO. 15 — Excerpts from Report of Committee on Political Education to Clerk of U. S. House of Representatives (Orig. Rec. 316-332):

COMMITTEE ON POLITICAL EDUCATION

Date	*Name of Payee*	*Purpose*	*Amount*
3-14-56	Wilbur Nolen	Primary Campaign 2nd Congressional District	$ 500
4- 4-56	North Carolina Labor's League for Political Education	6th Cong. Dist Campaign for Ralph Scott	1 000
4- 4-56	North Carolina Labor's League for Political Education	Campaign of Hugh Wells, 11th Cong. Dist.	
4- 4-56	North Carolina Labor's League for Political Education	Campaign of Charles Deane, 8th Cong. Dist.	1 000
4- 4-56	Alabama Labor's League for Political Education	Campaign of James T. Hamrick, 1st. Cong. Dist.	500
4-11-56	Alabama Labor's League for Political Education	Campaign of Wilbur Nolen, 2nd Cong. Dist.	500
4-12-54	Dallas County Committee on Political Education	Campaign of Henry Wade, 5th Cong. Dist.	500
4-13-56	The Citizens Registration Committee	Promotion drives to register people for voting	1 600

Date	*Name of Payee*	*Purpose*	*Amount*
1956			
4-26	Lankford for Congress Committee	Campaign	$ 500
5- 4	Staggers for Congress Committee	Campaign	500
5- 8	Allman for Congress Committee	Campaign	1 000
5-14	District of Columbia Committee for Representative Government	Contribution	4 500
5-14	North Carolina Labor's League for Political Education	Congressional Campaigns	2 500
5-14	North Carolina CIO Political Action Committee	Congressional Campaigns	2 500
5-19	Volunteer Committee for Perkins	Campaign	500
5-23	District of Columbia Committe for Representative Government	Contribution	500
5-24	Ralph Scott for Congress Committee	Campaign Contribution	1 000
6- 1	Citizens for Donoghue	Campaign Contribution	250
6-14	Re-elect Senator Wayne Morse Committee	Contribution	5 000
6-15	James V. Day	1st Cong. Dist Contribution	500
6-20	Illinois State CIO-PAC	Contribution Imle 23rd Cong. Dist.	1 000
6-29	Sabine Area Committee on Political Education	Contribution Brooks 2nd Cong. Dist.	450
7- 2	Texas AFL-CIO Joint Committee	Contribution Congressional Campaign	10 000

Date	Name of Payee	Purpose	Amount
1956			
7-10	Montana AFL-CIO and Committe on Political Education	Contribution Anderson 2nd Cong. Dist.	1 000
7-10	Rosen for Congress Club	Contribution 14th Cong. Dist.	500
7-17	Sabine Area Committee on Poiitical Education	Contribution Brooks 2nd Cong. Dist.	$ 300
7-17	Arkansas State Committee on Political Education	Contribution Jones 6th Cong. Dist.	500
7-17	Railway Labor's Political League	Contribution	2 000
7-20	Ross Bass Committee	Contribution 6th Cong. Dist.	1 000
8-3	Connecticut State PAC	Contribution Ward 1st Cong. Dist.	1 000
8-3	James Oliver Campaign Committee	Contribution 1st Cong. Dist.	1 000
8-3	Committee for F. Coffin for Cong.	Contributions 2nd Cong. Dist.	1 000
8-8	Textile Workers Union of American Political Education Fund	Contribution	2 000
8-10	Richards for Senate Committee	Contribution	5 000
8-10	Dodd for Senate Committee	Contribution	5 000
8-10	Stengel for Senate Committee	Contribution	5 000
8-10	Wickard for Senate Campaign Committee	Contribution	5 000
8-10	R. M. Evans for Senate Committee	Contribution	5 000
8-10	Clements Campaign Committee	Contribution	5 000

Date	Name of Payee	Purpose	Amount
1956			
8-10	Connecticut State PAC	Contribution Ward 1st Cong. Dist.	1 000
8-10	Magnuson Campaign Fund	Contribution	5 000
8-10	K. Holum for Senate Committee	Contribution	3 000
8-10	Clark for Senate Committee	Contribution	5 000
8-10	Q. Burdick Campaign Fund	Contribution	1 000
8-15	Central Maryland IUC-PAC	Contribution	$ 500
8-15	Maryland State IUC-PAC	Contribution	1 000
8-20	Staggers for Congress Committee	Contribution 2d Cong. Dist.	750
8-20	Burnside for Congress Committee	Contribution 4th Cong. Dist.	1 000
8-20	Reuss for Congress Committee	Contribution 5th Cong. Dist.	1 000
8-20	Johnson for Congress Club	Contribution 9th Cong. Dist.	1 000
8-27	G. Pfost Campaign Committee	Contribution 1st Cong. Dist.	1 000
8-27	J. C. Murray Campaign Account	Contribution 3rd Cong. Dist.	1 000
8-27	Hinko for Congress Committee	Contribution 4th Cong. Dist.	500
8-27	Pucinski for Congress Campaign	Contribution 11th Cong. Dist.	500
8-27	C. Boyle for Congress Committee	Contribution 12th Cong. Dist.	1 000
8-27	Citizens for Peter Mack, Jr.	Contribution 21st Cong. Dist.	1 000
8-27	K. Gray for Congress Committee	Contribution 25th Cong. Dist.	500

Date	*Name of Payee*	*Purpose*	*Amount*
1956			
8-27	H. Fox Campaign Fund	Contribution 1st Cong. Dist.	500
8-27	Lankford for Congress Committee	Contribution 5th Cong. Dist.	750
8-27	Foley for Congress Committee	Contribution 6th Cong. Dist.	1 000
8-27	Brademas for Congress Committee	Contribution 3rd Cong. Dist.	1 000
8-27	Committee to Elect Whitehead	Contribution 5th Cong. Dist.	500
8-27	King for Congress Club	Contribution 6th Cong. Dist.	500
8-27	Hill Congressional Campaign Committee	Contribution 7th Cong. Dist.	500
8-27	W. K. Denton	Contribution 8th Cong. Dist.	500
8-27	Ulrich for Congress Committee	Contribution 9th Cong. Dist.	$ 500
8-27	Committee to Elect Carnony for Cong.	Contribution 10th Cong. Dist.	500
8-27	Caroey Congressional Campaign Fund	Contribution 11th Cong. District	500
8-27	L. Anderson Campaign Committee	Contribution 2nd Cong. Dist.	500
8-27	Committee to Reelect E. Green	Contribution 3rd Cong. Dist.	1 000
8-27	Lee Congressional Campaign Fund	Contribution 1st Cong. Dist.	500
8-27	Allman for Congress Committee	Contribution 2nd Cong. Dist.	500
8-27	Committee for Porter for Congress	Contribution 4th Cong. Dist.	500
8-27	Fogarty Congressional Committee	Contribution 2nd Cong. Dist.	500
8-27	G. McGovern for Congress	Contribution 1st Cong. Dist.	1 000

Date	*Name of Payee*	*Purpose*	*Amount*
1956			
8-27	Whitehead for Congress	Contribution 6th Cong. Dist.	1 000
8-27	Jennings Congressional Campaign Fund	Contribution 9th Cong. District	1 000
8-27	Quenstedt Congressional Campaign Fund	Contribution 10th Cong. District	1 000
8-27	J. A. O'Callaghan	Contribution Cong. at large	1 000
8-27	Bennett 2nd Dist. Committee	Contribution 2nd Cong. Dist.	500
8-27	Martin for Congress Campaign Committee	Contribution 5th Cong. District	500
8-27	Kuta for Congress Campaign Fund	Contribution Cong. at large	1 000
8-27	Ward for Congress Campaign Committee	Contribution 1st Cong. Dist.	1 000
8-27	D. J. Flood Campaign Committee	Contribution 11th Cong. Dist.	1 000
8-27	Hon. J. M. Quigley	Contribution 19th Cong. Dist.	$1 000
8-27	Hon. F. M. Clark	Contribution 25th Cong. Dist.	1 000
8-27	Fullam Congressional Campaign Committee	Contribution 8th Cong. District	1 000
8-31	F. Church for Senate Committee	Contribution	5 000
8-31	W. Morse Political Committee	Contribution	2 000
8-31	Ardery for Cong. Campaign Committee	Contribution 3rd Cong. Dist.	1 000
9- 5	Moreland for Cong. Committee	Contribution 1st Cong. Dist.	1 000

Date	Name of Payee	Purpose	Amount
1956			
9- 5	Quinney for Cong. Committee	Contribution 6th Cong. Dist.	1 000
9- 5	Cross Campaign Committee	Contribution 7th Cong. Dist.	500
9- 5	McFall 11th Dist. Committee	Contribution 11th Cong. Dist.	1 000
9- 5	B. F. Sisk for Cong. Committee	Contribution 12th Cong. Dist.	500
9- 5	W. K. Stewart Campaign Committee	Contribution 13th Cong. Dist.	1 000
9- 5	McDowell for Cong. Committee	Contribution Cong. at large	1 000
9- 5	Giaimo for Cong. Campaign Committee	Contribution 3rd Cong. Dist.	1 000
9- 6	R. Weir Campaign Fund	Contribution 3rd Cong. Dist.	1 000
9- 6	Robbie for Cong. Committee	Contribution 5th Cong. Dist.	1 000
9- 6	Re-elect Coya to Cong. Committee	Contribution 9th Cong. Dist.	1 000
9- 6	Magnuson Campaign Fund	Contribution	1 000
9- 6	McCoy for Congress Committee	Contribution 3rd Cong. Dist.	1 000
9- 6	Aspinall for Cong. Committee	Contribution 4th Cong. Dist.	1 000
9- 6	Hon. B. O'Hara	Contribution 2nd Cong. Dist.	500
9-11	H. A. Williams Campaign Committee	Contribution	$1 000
9-19	Haroldson for Congress Committee	Contribution 7th Cong. Dist.	500
9-19	Mahoney for Congress Committee	Contribution 1st Cong. Dist.	1 000
9-19	Johnson for Congress Committee	Contribution 2nd Cong. Dist.	500

Date	Name of Payee	Purpose	Amount
1956			
9-19	W. K. Denton	Contribution 8th Cong. Dist.	1 000
9-19	Patterson for Congress Committee	Contribution 3rd Cong. Dist.	1 000
9-19	Polk Congressional Campaign Fund	Contribution 6th Cong. Dist.	1 000
9-19	Ashley Campaign Fund	Contribution 9th Cong. Dist.	1 000
9-19	Rosen for Congress Club	Contribution 14th Cong. Dist.	500
9-19	J. McSweeney for Congress Committee	Contribution 16th Cong. Dist.	500
9-19	Michigan PAC	Contribution Cong. at large	10 000
9-19	Mich. Labor's League for Political Education	Contribution Cong. at large	2 000
9-19	Fogarty Congressional Campaign Committee	Contribution 2nd Cong. Dist.	500
9-19	Miller for Congress Committee	Contribution 1st Cong. Dist.	500
9-19	W. Boring for Congress Committee	Contribution Cong. at large	500
9-19	Denman for Congress Committee	Contribution 5th Cong. Dist.	500
9-19	Coad Congressional Campaign Fund	Contribution 6th Cong. Dist.	500
9-19	Mahoney for Senate Campaign Committee	Senatorial Contribution	2 000
9-19	Friedel for Congress Committee	Contribution 7th Cong. Dist.	500
9-19	J. C. Carroll Senate Campaign Fund	Senatorial Contribution	5 000
9-20	C. M. Baley	Contribution 3rd Cong. Dist.	$1 000

Date	Name of Payee	Purpose	Amount
1956			
9-20	Textile Workers Union of America Political Education Fund	Contribution	5 000
9-21	Nat'l. Non-Partisan Issues Commission	Contribution	500
9-25	A. Chapin	Campaign Expenses	413
9-26	Doalan for Congress Committee	Contribution 14th Cong. Dist.	2 000
9-27	G. McGovern for Congress Committee	Contribution 1st Cong. Dist.	1 000
9-28	Arthur Chapin	Campaign Expenses	257 40
9-28	Maryland CIO-PAC	Contribution	1 600
10-2	Aspinall for Congress Committee	Contribution 4th Cong. Dist.	500
10-2	Cronning for Congress Committee	Contribution 1st Cong. Dist.	1 000
10-2	McConkie Campaign Committee	Contribution 3nd Cong. Dist.	1 000
10-2	K. Holum for Congress Committee	Contribution Cong. at large	2 000
10-2	Eastman Congressional Campaign Fund	Contribution 2nd Cong. District	500
10-2	Porter for Congress Committee	Contribution 4th Cong. Dist.	500
10-2	Moreland for Congress Committee	Contribution 1st Cong. Dist.	500
10-2	Q. Burdick Campaign Fund	Senatorial Contribution	1 500
10-2	Geelan for Congress Committee	Contribution Cong. at large	500
10-2	Hocking Cong. Campaign Fund	Contribution Cong. at large	500
10-2	W. Boring for Congress Committee	Contribution Cong. at large	1 500
10-2	J. Benesch for Congress Fund	Contribution 2nd Cong. Dist.	1 000

Date	Name of Payee	Purpose	Amount
1956			
10-2	L. Anderson Campaign Committee	Contribution 2nd Cong. Dist.	500
10-2	Robbie for Congress Committee	Contribution 5th Cong. Dist.	1 000
10- 2	Haroldson for Congress Committee	Contribution 7th Cong. Dist.	$1 000
10- 2	Re-elect Coya to Cong. Committee	Contribution 9th Cong. Dist.	500
10- 2	Macdonald for Congress Committee	Contribution 8th Cong. Dist.	500
10- 2	J. Holtz for Congress Committee	Contribution 10th Cong. Dist.	500
10- 2	Mahoney for Senate Campaign Committee	Contribution	3 000
10- 2	Montgomery Congressional Fund	Contribution 4th Cong. Dist.	500
10- 2	Breeding for Congress Committee	Contribution 5th Cong. Dist.	500
10- 2	Mahoney 6th District Fund	Contribution 6th Cong. Dist.	500
10- 2	Wickard for Senate Committee	Contribution	2 500
10- 2	Brademas for Congress Committee	Contribution 3rd Cong. Dist.	500
10- 2	Carney Cong. Campaign Fund	Contribution 11th Cong. Dist.	500
10- 2	Clark for Senate Fund	Contribution	5 000
10- 2	Fullam Cong. Campaign Fund	Contribution 8th Cong. Dist.	500
10- 2	D. J. Flood Campaign Committee	Contribution 11th Cong. Dist.	1 000
10- 2	Herschberger for Congress Committee	Contribution 18th Cong. Dist.	500
10- 2	Hon. J. M. Quigley	Contribution 19th Cong. Dist.	1 000

Date	Name of Payee	Purpose	Amount
1956			
10- 2	Thomas for Congress Committee	Contribution 24th Cong. Dist.	500
10- 2	Hon. F. M. Clark	Contribution 25th Cong. Dist.	1 000
10- 2	Holland for Congress Committee	Contribution 30th Cong. Dist.	500
10- 2	Campaign Fund of P. W. Rodino, Jr.	Contribution 10th Cong. Dist.	500
10- 2	F. Church for U. S. Senate	Contribution	1 000
10- 2	O'Callaghan for Congress Fund	Contribution Cong. at large	1 000
10- 2	Staggers for Congress Committee	Contribution 2nd Cong. Dist.	500
10- 2	Burnside for Congress Committee	Contribution 4th Cong. Dist.	1 000
10- 2	Magnuson Campaign Fund	Contribution	1 000
10- 2	McCoy for Congress Committee	Contribution 3rd Cong. Dist.	1 000
10- 2	Whitehead for Congress Committee	Contribution 6th Cong. Dist.	500
10- 2	Lankford for Congress Committee	Contribution 5th Cong. Dist.	500
10- 2	Foley for Congress Committee	Contribution 6th Cong. Dist.	500
10- 2	Wetherby for Senate Fund	Senate Contribution	5 000
10- 2	J. C. Murray Campaign Acco[illegible]	Contribution 3rd Cong. Dist.	500
10- 2	Hinko for C[illegible]ess Committee	Contribution 4th Cong. Dist.	500
10- 2	Yates Cong. Campaign Fund	Contribution 9th Cong. Dist.	500
10- 2	Pusinski for Cong. Campaign Fund	Contribution 11th Cong. Dist.	500

Date	*Name of Payee*	*Purpose*	*Amount*
1956			
10- 2	C. Boyle for Congress Camp. Fund	Contribution 12th Cong. Dist.	500
10- 2	Allen for Cong. Committee	Contribution 18th Cong. Dist.	500
10- 2	Citizens Committee for P. Mack, Jr.	Contribution 21st Cong. Dist.	500
10- 2	K. Gray for Congress Committee	Contribution 25th Cong. Dist.	500
10- 2	G. Pfost Campaign Committee	Contribution 1st Cong. Dist.	1 000
10- 2	Reynolds Campaign Fund	Contribution 2nd Cong. Dist.	500
10- 2	Dodd for Senate Committee	Contribution	2 500
10- 2	Ward for Congress Committee	Contribution 1st Cong. Dist.	1 000
10-2	Bennett 2nd Dist. Committee	Contribution 2d Cong. Dist.	$1 000
10-2	Giaimo for Cong. Campaign Fund	Contribution 3d Cong. Dist.	500
10-2	Martin for Cong. Campaign Fund	Contribution 5th Cong. Dist.	1 000
10-2	Cross Campaign Committee	Contribution 7th Cong. Dist.	1 000
10-2	McFall 11th Dist. Committee	Contribution 11th Cong. Dist.	1 000
10-3	P. Weightman	Campaign Expenses	500
10-4	North Carolina State CIO-PAC	Contribution	1 500
10-5	Hayes Cong. Campaign Fund	Contribution 18th Cong. Dist.	500
10-5	Carter Cong. Campaign Committee	Contribution 4th Cong. Dist.	500
10-5	Mahoney for Cong. Committee	Contribution 1st Cong. Dist.	1 000
10-5	Reuss for Congress Committee	Contribution 5th Cong. Dist.	1 000

Date	Name of Payee	Purpose	Amount
1956			
10-5	Johnson for Cong. Club	Contribution 9th Cong. Dist.	1 000
10-5	Idaho Labor's League for Political Education	Contribution	2 500
10-5	Idaho PAC	Contribution	2 500
10-5	Macdonald for Congress	Contribution 8th Cong. Dist.	500
10-5	J. Holtz for Congress Committee	Contribution 10th Cong. Dist.	500
10-9	E. R. Williamson	Office Expense	67 06
10-10	Los Angeles Joint Board ACWA	Contribution	250
10-10	Maier for U. S. Senate	Contribution	2 500
10-10	Weatherby Senate Campaign Fund	Contribution	2 500
10-10	Clements for Senate Committee	Contribution	2 500
10-10	Richards for U. S. Senator Fund	Contribution	5 000
10-10	Flynn for Congress Committee	Contribution 1st Cong. Dist.	1 000
10-8	O'Hara for Cong. Campaign Fund	Contribution 2d Cong. Dist.	500
10-10	Kastenmeier Campaign Fund	Contribution 2d Cong. Dist.	1 000
10-10	Wilson for Congress Committee	Contribution 1st Cong. Dist.	1 000
10-10	Patterson Cong. Campaign	Contribution 2d Cong. Dist.	1 000
10-10	Christopher for Cong. Committee	Contribution 4th Cong. Dist.	1 000
10-10	Hull Cong. Campaign Fund	Contribution 6th Cong. Dist.	1 000
10-10	Moulder for Congress Club	Contribution 11th Cong. Dist.	1 000
10-10	Rogers for Cong. Fund	Contribution 1st Cong. Dist.	1 000

Date	*Name of Payee*	*Purpose*	*Amount*
1956			
10-10	Utah State AFL-CIO COPE	Contribution	2 500
10-12	New Jersey State CIO-PAC	Contribution	500
10-12	Dallas AFL-CIO Council	Contribution	500
10-12	Mich. State PAC	Contribution	1 000
10-12	Wickard for Senate Committee	Contribution	2 500
10-12	Cincinnati Council PAC	Contribution	500
10-12	United Labor Committee for Williams	Contribution 6th Cong. Dist.	1 000
10-12	Thompson for Congress Committee	Contribution 4th Cong. Dist.	500
10-12	Carvey Cong. Campaign Fund	Contribution 11th Cong. Dist.	500
10-12	Illinois State CIO-PAC	Contribution	500
10-12	New York Laundry Workers Joint Board-ACWA	Contribution	1 000
10-12	Cleveland IUC	Contribution	1 000
10-12	Daniel Powell	Salary	173
10-12	Thomas A. Probey	Salary	79 15
10-12	Ernest R. Williamson	Salary	173
10-15	N. J. Labor's League for Political Education	Contribution	2 500
10-15	N. J. State PAC	Contribution	2 500
10-15	Textile Workers Union of America Political Education Fund	Contribution	$5 500
10-15	Textile Workers Union of America Political Education Fund	Contribution	500
10-15	Colo. State COPE	Contribution	100
10-17	Bible for Senate Campaign Fund	Contribution	500

Date	*Name of Payee*	*Purpose*	*Amount*
1956			
10-19	Lowery for Congress Committee	Contribution 35th Cong. Dist.	250
10-19	Maryland-District of Columbia COPE	Contribution	2 000
10-19	Stevenson-Kefauver Campaign Dinner Committee	Contribution	1 000
10-19	Textile Workers Union of America Political Education Fund	Contribution	500
10-23	Rosen for Congress Club	Contribution 14th Cong. Dist.	500
10-23	Stengel for Senator Campaign Fund	Contribution	2 500
10-23	Forand for Congress Committee	Contribution 1st Cong. Dist.	500
10-23	Brock for Congress Committee	Contribution 3d Cong. Dist.	250
10-23	Hubert Smith for Congress Club	Contribution 15th Cong. Dist.	500
10-23	Campaign Committee for Donald L. O'Toole	Contribution 12th Cong. District	1 000
10-23	Lindsay for Congress Committee	Contribution 12th Cong. Dist.	500
10-23	Rhodes for Congress Committee	Contribution 14th Cong. Dist.	500
10-23	Mahoney for Senate Campaign Fund	Contribution	2 500
10-23	Nat'l. Non-Partisan Issues Committee	Contribution	1 500
10-23	King for Congress Club	Contribution 6th Cong. Dist.	500
10-23	John Carroll Senate Campaign Committee	Contribution	$2 500
10-23	Dodd for Senate Campaign Fund	Contribution	1 000

Date	*Name of Payee*	*Purpose*	*Amount*
1956			
10-23	District of Columbia IUC	Contribution	500
10-23	Quenstedt Cong. Campaign Fund	Contribution 10th Cong. Dist.	500
10-23	Dodd for Senate Campaign Fund	Contribution	500
10-23	Wagner for Senate Campaign Fund	Contribution	5 000
10-23	Carvey Cong. Campaign Fund	Contribution 11th Cong. Dist.	500
10-23	Los Angeles Joint Board ACWA	Contribution	300
10-23	Cleveland Industrial Union Council	Contribution	1 000
10-23	Laundry Workers Joint Board—ACWA	Contribution	1 000
10-23	Ill. State PAC	Contribution	800
10-23	Dallas AFL-CIO Council	Contribution	500
10-23	N. J. State PAC	Contribution	500
10-24	Evans for Senate Campaign Fund	Contribution	2 500
10-26	Robbie for Congress Committee	Contribution 5th Cong. Dist.	500
10-26	Moreland for Congress Committee	Contribution 1st Cong. Dist.	500
10-26	Mahoney for Senate Campaign Fund	Contribution	2 500
10-26	Dodd for Senate Campaign Fund	Contribution	2 500
10-26	Stock for Congress Committee	Contribution 4th Cong. Dist.	1 000
10-26	Save our Resources Committee	Contribution	5 000
10-29	California Labor's League for Political Education	Contribution	2 500

Date	*Name of Payee*	*Purpose*	*Amount*
1956			
10-29	Delaney for Congress Committee	Contribution 5th Cong. Dist.	500
10-29	McCutcheon Cong. Campaign Committee	Contribution 6th Cong. Dist.	$ 500
10-29	Garmatz for Cong. Headquarters	Contribution 3d Cong. Dist.	250
10-29	William Collins	Contribution Wagner Dinner Tickets	26
10-29	Stevenson-Kefauver Southern California Campaign Committee	Contribution	2 500
10-29	Johnson for Congress Fund	Contribution 2d Cong. Dist.	250
10-29	Quentin Burdick Campaign Fund	Contribution	375
10-29	John Carroll Senate Campaign Committee	Contribution	1 000
10-29	Re-elect Morse Committee	Contribution	2 000
10-29	Richards for Senate Campaign Fund	Contribution	1 000
10-30	Volunteers for Stevenson-Kefauver	Contribution	5 000
10-30	Stevenson-Kefauver Campaign Committee	Contribution	5 000
10-30	Stevenson-Kefauver Club	Contribution	5 000
10-30	Volunteers for Stevenson-Kefauver	Contribution	5 000
10-30	Volunteers for Stevenson-Kefauver	Contribution	3 000
10-30	Volunteers for Stevenson-Kefauver	Contribution	5 000
10-30	Volunteers for Stevenson-Kefauver	Contribution	5 000

Date	Name of Payee	Purpose	Amount
1956			
10-30	Volunteers for Stevenson-Kefauver	Contribution	5 000
10-30	N. J. State PAC	Contribution	500
10-30	Md.-D.C. Federation of Labor	Contribution	67 50
10-30	McDowell for Congress Committee	Contribution Cong. at large	750
10-30	Ullman for Congress Committee	Contribution 2d Cong. Dist.	500
10-30	LeRoy Anderson Campaign Committee	Contribution 2d Cong. Dist.	8 500
10-30	Los Angeles Joint Board ACWA	Contribution	300
10-31	Metropolitan Baltimore PAC	Contribution	500
10-31	Maryland IUC-PAC	Contribution	500
10-31	Okla. State Labor's League for Political Education	Contribution	2 000
10-31	AFL-CIO	Travel Expense	1 438 79
10-31	Johnson for Senate Committee	Senate Contribution	2 000
10-31	Weatherby Senate Campaign Fund	Senate Contribution	1 000
10-31	Calif. State PAC	Contribution	2 500
10-31	Calif. State Labor's League for Political Education	Contribution	2 500
11-2	Geo. Mahoney Campaign Committee	Contribution	2 500
11-2	Salem for Congress Committee	8th Cong. Dist. Iowa	200
11-2	Steel City Trade Union Council	Contribution	1 000
11-2	Weatherby Senate Campaign Fund	Contribution	1 000

Date	*Name of Payee*	*Purpose*	*Amount*
1956			
11-2	W. Va. Volunteers for Stevenson	Contribution	5 000
11-2	Tennessee Volunteers for Stevenson	Contribution	5 000
11-2	Virginia Volunteers for Stevenson	10th Cong. Dist.	5 000
11-2	Ind. State IUC	Contribution	200
11-2	Geo. Mahoney Campaign Committee	Contribution	2 500
11-2	Wickard Senate Campaign Fund	Contribution	3 000
12-5	William F. Schnitzler	Reimbursement for air travel — Andrew Biemiller	190 74
12-10	Nat'l. Non-Partisan Issues Committee	Contribution	2 000
1- 6	Allegheny County Democratic Committee c/o Elmer Holland, 1301 Commonwealth Bldg. Pittsburgh 22, Pa.	Campaign For Elmer Holland	$ 500 00
1957			
3-21	Texas State Industrial Council	Contribution— Yarborough	663 00
3-22	Joe M. Montoya	Contribution	500 00
3-22	New Mexico State AFL-CIO	Contribution— J. M. Montoya	500 00
4- 8	Independent Committee for Morse	Contribution	3 000 00
8- 1	AFL-CIO	Reimbursement of salaries and pension	6 069 59
8-21	Proxmire for Senate Committee	Contribution	4 000 00

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IN THE

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OCTOBER TERM, 1962

No. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES AND BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, *Petitioners*,

v.

ANNA MAE ALLEN, ET AL., *Respondents*.

PETITIONERS' REPLY BRIEF

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITIONERS' REPLY BRIEF

This reply is made for the purpose of pointing out some of the inaccurate and misleading statements in the Brief for the Respondents which, if uncorrected and believed, might result in misunderstanding the nature of this case.

Most of respondents' citations for their assertions of purported fact are not to the printed record but to

the record certified to this Court by the court below, some of which they reproduce in an appendix to their brief. This of course is contrary to Rule 26(2) of this Court's rules, which provides that if the respondent does not file a counterdesignation of the record to be printed he shall be deemed to have agreed that the case should be considered on the record designated by the petitioner for printing. Respondents made no counterdesignation. Normally we would have no objection to anybody citing anything he pleases. But when, as here, the respondents distort and misrepresent the nature of the material they are citing, which they could have made but did not make available for distribution in the printed record, the Court may see fit to apply its Rule 26(2).

QUESTION PRESENTED

The question presented, as stated by respondents, is predicated on a false premise, and assumes that they have already prevailed in this Court on the merits and that there remains only the question of a remedy. They say that it has been established that petitioners will subject respondents to compulsion that was adjudged unlawful in *International Association of Machinists* v. *Street*, 367 U.S. 740.

It has not been so established. In the *Street* case this Court held that individual employees who are unwilling union members under a railroad union-shop agreement and who are opposed to particular political or ideological objectives supported by union funds derived from dues and who make such opposition known to the union, would be entitled to limited relief against such expenditure of their funds, such as a return of a portion of their dues or an injunction against such

expenditure of a portion of their dues. In this case none of the respondents is a member of or has paid any money to the petitioners under the union shop, there has been no adjudication that petitioners would so spend any of respondents' dues or other funds should they pay any, there has been no determination that respondents have advised petitioners of anything, and so the entire premise of the respondents' statement of the Question Presented is non-existent.

We submit that even if the Question Presented were as stated by respondents, the answer would be that the remedy granted below is inconsistent with this Court's decision in the *Street* case, for the reasons stated in our Petition.

STATEMENT OF THE CASE

In the last full paragraph on page 3 of their brief the respondents say the evidence contains many pages of exhibits showing "by dates, names, and individual amounts, literally hundreds of thousands of dollars of contributions paid to political candidates whom the higher union officials selected as the recipients of such largess." They say that the lists were too bulky to be included in the printed record and so instead are printed in the appendix to their brief.

It is difficult to avoid the conclusion that this is a deliberately misleading statement. It is misleading for a number of reasons.

Apart from the fact that the amounts listed on page 7a of their brief and the first three "contributions" on page 8a are amounts contributed to, not by, Railway Labor's Political League, the remainder of the lists on pages 8a-39a are of contributions not by any of the

petitioner unions (or any other unions), but are lists of contributions by Railway Labor's Political League and the Committee on Political Education of the AFL-CIO in 1956. They are almost exclusively contributions to political organizations, not to the candidates. But more important, the uncontradicted evidence is that such disbursements were made entirely from contributions voluntarily made to those organizations for such purposes, and that none of the money came from dues or fees paid to either of the petitioners. R. 86, 87-9, 91, 98, 106, 124-133. There was no evidence that any of the plainitffs were opposed to any of the candidates to whose campaigns such contributions were voluntarily made by other people.

The respondents are guilty of equally gross distortion when they say "the recipients of such largess" are selected by "the higher Union officials". There is nothing to show who selects the causes to which R.L.-P.L. and C.O.P.E. make contributions, nothing to show they are union officials and certainly nothing to show that they act as union officials in dispensing the voluntary contributions to R.L.P.L. and C.O.P.E., and most assuredly nothing to show that they are officials of the unions in this case (as the respondents probably meant this Court to believe). It should be noted that the only reference to the printed record made by respondents in purported support of this blatantly false paragraph contains a stipulation that none of the contributions was made by either of petitioners. R. 109. And as we showed in our main brief, of course there was no showing that any respondent was opposed to any of the candidates who may have benefited from any of those contributions.

In the last paragraph beginning on page 3 of their brief the respondents mention certain special editions of the newspaper Labor supporting *in past years* certain candidates for public office. Since none of respondents have paid any dues to the unions, it is clear that none of their dues was used to support that newspaper, ignoring the fact that there is no showing the respondents opposed any of those candidates. There is no evidence that the lodges to which respondents would pay dues if they became members subscribe to Labor. R. 188. (Parenthetically, their statement that each of the 36 special editions ran to "something less than a million copies", when checked against their record reference (R. 133), is sheer fabrication; as the record shows, the special editions, plus the regular edition, were in the aggregate "something less than a million copies.")

In the same paragraph they mention certain expenditures by the AFL-CIO for legislative and other purposes. They do not even contend that any such expenditures promoted causes opposed by respondents or opposed causes supported by respondents, or that, even if they did, respondents made that fact known, or that even if they made that fact known, their dues were used for such purposes. Obviously their dues were not used for such purposes, for they have not paid any dues.

The remainder of respondents' Statement of the Case contains numerous other misstatements. It is sufficient to point out that there is not a word anywhere to show that any of the respondents is opposed to any of the political or legislative activities referred to.

ARGUMENT

Some of respondents' arguments are of a curious nature.

They argue on page 7 that our argument that respondents never advised us of any cause supported by us to which they were opposed is unsound because we never asked for a bill of particulars. But we did better than get a bill of particulars. We asked the respondents, on the witness stand, to name any political candidates or causes or legislation supported by petitioners which they opposed and not one of them could name a single such candidate or cause or legislative item except that two or three of them stated that they were opposed to the enactment of section 2, Eleventh of the Railway Labor Act; but the enactment of that section necessarily preceded any union-shop compulsion on the respondents.

On pages 8 and 9 they argue that it is "thoroughly amazing" to find the petitioning unions arguing that respondents case must fail for their failure to inform the unions of any particular union political activity opposed by respondents because the unions have argued that there is no evidence in the record that they engage in political activity. Why this should be amazing is not apparent. We have said, first, that the respondents have not shown that petitioners engage in political activity, and we have further said, as a separate reason for their case being without substance, that they have not informed the union of any particular union activity to which they are opposed, as the *Street* case holds they must do to have a cause of action.

On page 10 they seem to argue that "it seems unnecessary to pursue the defendants [petitioners] into

the absurdities of their position on this subject" because by bringing this action and pursuing it they have made known to the unions the causes to which they object. This seems to espouse a doctrine of jurisprudence difficult to comprehend. With respect to respondents' having a cause of action because they brought this lawsuit, the argument seems to urge that one who does not have a cause of action against another acquires a cause of action by suing him. We doubt that there has ever been a more fantastic attempt to lift oneself by one's own bootstraps. And with respect to having "made known" the causes they oppose by pursuing this litigation, the only time respondents made known to the union their position with respect to any cause was when they testified at the trial, and at that time they were utterly unable, although asked, to specify a single cause espoused by petitioners and opposed by respondents since the union shop in the railroad industry. The extensive quotations on pages 10-13 of their brief shed not a single ray of light on what causes there may be that petitioners have supported since they have had a union shop and which respondents oppose.

The respondents are wrong also in saying, as they do on page 13 of their brief, that we assert "that each of the plaintiffs 'is to be regarded as a voluntary or acquiescing dues payer.'!" We assert, as is the fact, that not one of them is a dues payer at all. And we suggest further that the record as a whole shows that their interest in this lawsuit is to remain non-dues-payers; they have proven nothing more than their opposition to a union shop, and this Court has unmistakably held that a union shop is not unlawful.

Point II of the argument in respondents' brief consists of several unrelated components. It argues, in effect, that assuming the respondents have proven a cause of action, they should be relieved entirely of any obligations under the union shop unless the unions prove the precise amount of respondents' damages. This is a doctrine this Court rejected in the *Street* case. They rely upon hopelessly inapposite precedents. They point with pride to the fact that the trial court (over their objection) refused to sustain their case as a class action. They say it is apparent that in the *Street* case this Court was "casting about" for a remedy which happens to be just the remedy granted in this case in the trial court. This is so, they say in part, because the injunction granted by the trial court in this case does not enjoin the collection of all funds from the respondents. This is fully answered on page 22 of our main brief. It is difficult to understand how respondents can persist in arguing that the judgment below is not an injunction against enforcement of the union-shop agreement.

Respectfully submitted,

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February 27, 1963